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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1887.**

No. 309. 49

THE GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY AND THE GOODYEAR RUBBER MANUFACTURING COMPANY, APPELLANTS,

*vs.*

THE GOODYEAR RUBBER COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

**FILED SEPTEMBER 6, 1885.**

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*vs.*

THE GOODYEAR RUBBER COMPANY.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come, Greeting:

Know ye that we, having inspected the files of the superior court of the city of New York, do find there remaining on file a certain record and the proceedings (a copy of the whole of which said record and of the proceedings is hereto annexed) in an action wherein Goodyear Rubber Company is plaintiff and Goodyear's India Rubber Glove M'f'g Co. & o-rs are defendants, in the words and figures following, to wit:

*Summons.*

2 Superior Court of the City of New York.

GOODYEAR RUBBER COMPANY, Plaintiff,

*against*

GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, Goodyear's Rubber Manufacturing Company, George M. Allerton, and John D. Vermeule, Defendants.

To the above-named defendants and each of them:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated June 12th, 1882.

MACFARLAND, REYNOLDS & LOWREY,
*Plaintiff'- Attorney-.*

Office and post-office address, No-. 59 & 61 Wall street, New York city.

[Endorsed:] —— ——, plaintiff, against —— ——, defendant. Summons. —— ——, plaintiff's attorney.

3 Superior Court of the City of New York.

GOODYEAR RUBBER COMPANY, Plaintiff,

*against*

GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, Goodyear's Rubber Manufacturing Company, George M. Allerton, and John D. Vermeule, Defendants.

The plaintiff, complaining of the defendants, alleges—

First. That the plaintiff company is a corporation, and was duly created and organized as such corporation, under its above-mentioned corporate name of Goodyear Rubber Company, on or about the 20th of November, 1872, under and in pursuance of an act of the Legislature of this State passed February 17th, 1848, entitled

"An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes" and the several acts amendatory thereof.

The plaintiff company was so organized for the purpose of manufacturing and dealing, in the State of New York and elsewhere, in India-rubber and gutta-percha goods and other merchandise, as duly set forth in the certificate of organization.

The plaintiff commenced carrying on the business aforesaid in the city of New York on or about the first day of January, 1873, and has since carried on business there and elsewhere, as hereinafter more fully set forth.

4 Afterwards and on or about the 12th day of August, 1879, the plaintiff company was lawfully reorganized, retaining its same corporate name, under and by virtue of an act of the Legislature of this State passed June 21st, 1875, entitled "An act to provide for the reorganization and regulation of certain business corporations," and the plaintiff since on or about the 20th of November, 1872, has existed and still continues to exist as a lawful corporation carrying on the business for which it was created under its said corporate name.

Second. In pursuance of the object for which the plaintiff company was organized, it commenced the business of manufacturing and dealing in India-rubber and gutta-percha goods and other merchandise under its said corporate name in the said city of New York on or about the first day of January, 1873, as hereinbefore stated.

A large amount of capital was and has been from time to time invested in the said business, and, as the result of laborious and diligent attention to the business and affairs of the plaintiff on the part of its officers and agents, the said business rapidly increased in magnitude and prosperity.

The plaintiff's principal places of business have been and are in the city of New York, where it maintains three large warehouses or stores, but as the plaintiff's business increased it was found judicious and practicable to establish branch houses in other States and cities.

5 The plaintiff now has such branch houses in the city of Buffalo, in this State; in the city of Chicago, in the State of Illinois; in the city of Milwaukee, in the State of Wisconsin; in the city of St. Louis, in the State of Missouri, and in the city of San Francisco, in the State of California, all carrying on an extensive business. The plaintiff also maintains large factories in other States for the manufacture of goods and merchandise in which it deals. The plaintiff, through its principal establishment and various branches, for many years has carried on and now does carry on a large trade, not only in the United States, but with Mexico, South America, the various countries of Europe, China, Japan, Australia, and New Zealand and, in fact, throughout the world where articles of the kind manufactured and dealt in by plaintiff are used.

The plaintiff has, from time to time, beginning in the year 1874, issued quarter yearly to its patrons, customers, and the public, under its proper name of the Goodyear Rubber Company, a "Rubber Trade Journal," so called, containing a list of its various manu-

factures and of the articles in which it deals. The plaintiff annexes a copy of this Trade Journal to this complaint containing such list, and prays that the same may be taken to be in all respects a part thereof, with like effect as if the said several articles were herein set out and described at length.

The plaintiff has also continuously since its organization used and employed its said corporate name on signs at its various places of business and factories and on its bill and letter heads, and the same is stamped upon the various articles of its manufacture.

6 Plaintiff's corporate name has been and is also employed and used upon its corporate seal in all contracts and agreements and other business transactions.

Third. By reason of the facts hereinbefore set forth the plaintiff, as it is advised, became lawfully possessed of an exclusive right and title to its said corporate name so acquired and employed as aforesaid, and became and was and is vested with a right of property therein, which, by reason of the inseparable connection of its said name with its extensive business and the good will that has come to be associated therewith and appertains thereto, has become a right of property of great value, and the exclusive right to the use of its said name in connection with its said business has become essential to the prosperity thereof. Such exclusive right of the plaintiff has been universally recognized and respected, except by the defendants, who, while recognizing in formal contracts and business relations the plaintiff's said right and title, have, by fraudulent and wrongful imitations of the plaintiff's name and the appropriation thereof in the manner hereinafter stated to the uses of their own business, wrongfully and unlawfully sought to divert from the plaintiff and appropriate to themselves, the defendants, the good will of the said name and the plaintiff's trade and custom.

Fourth. At the date of the organization of the plaintiff company, in November, 1872, as hereinbefore stated, an association or

7 corporation was and for some years previous to that date had been carrying on business in the city of New York under the name of the Goodyear's India Rubber Glove Manufacturing Company (a name entirely different from the name of the plaintiff), and dealt in various articles of which India rubber formed a component part, the business of that company being similar to that of the plaintiff, and the commodities dealt in being also similar to those manufactured and dealt in by the plaintiff.

The plaintiff is informed and believes and alleges that at all times prior to the date of the organization of the plaintiff company in November, 1872, as hereinbefore stated, the said Goodyear's India Rubber Glove Manufacturing Company had conducted its business exclusively under its proper corporate name, employing that name alone upon its business signs, its letter and bill heads, and upon its common seal and in all contracts and business transactions, and stamping the same upon the products of its manufacture, and that the said company was universally known to its patrons, customers, and the public at large by its proper corporate name of "Goodyear's India Rubber Glove Manufacturing Company."

Fifth. Afterwards and some time after the creation and organization of the plaintiff company the defendant began to employ, at first to a limited extent and so as not to attract particular attention, the name "Goodyear's Rubber Manufacturing Company," as more particularly hereinafter set forth.

8 The plaintiff is informed and believes that the defendants, George M. Allerton and John D. Vermeule, together with some other person or persons whose names are not known to the plaintiff, claim and pretend to be a corporation or association, having power to sue and be sued, by the said name of "Goodyear's Rubber Manufacturing Company."

The plaintiff is also informed, believes, and alleges that the said defendants, George M. Allerton and John D. Vermeule, are the principal owners and managers of the business carried on under both and each of the aforesaid names—that is to say, the "Goodyear's India Rubber Glove Manufacturing Company" and the Goodyear's Rubber Manufacturing Company, and as such direct and control whatever is done and performed under the two names last above mentioned, and have done or caused to be done all the various acts and wrongs hereinafter complained of.

Sixth. Soon after the organization of the plaintiff company and the establishment of its business, as hereinbefore set forth, the defendants, for the purpose of wrongfully diverting to themselves the business and good will of the plaintiff company to the injury of the plaintiff, resorted to various devices and contrivances, all having for their object an imitation and appropriation of the plaintiff's name to the defendant's own use and business.

Among the earlier devices of this character the word "India" and "glove," in the name of the Goodyear's India Rubber Glove Manufacturing Company, wherever employed, were represented sometimes in very small letters relatively to those employed in

9 the words "Goodyear's Manufacturing Company," and sometimes these two distinguishing words, "India" and "glove," were represented by the initial letters of such alone, the defendants' object and intent being by this means to suppress and conceal the words "India" and "glove," as far as might be, without actually eliminating the same, in order by this means to produce a close resemblance between the name of this defendant company and the name of the plaintiff, requiring particular observation to distinguish between the said names, because, after the concealment of the words "India" and "glove" in the manner above stated, the prominent words retained would be and were "Goodyear's Rubber Manufacturing Company," constituting a name for practical purposes almost identical with the names of the plaintiff.

But this close, unlawful, and fraudulent imitation of the plaintiff's name the plaintiff sustained much loss and inconvenience, and the defendants, by reason thereof, frequently became possessed of letters and telegrams addressed to and intended for the plaintiff company, and sometimes opening the same under pretense of mistake; sometimes returning the same to the writer, well knowing that such

letters were in fact intended for the plaintiff, and sometimes sending them to the plaintiff after having opened the same.

Seventh. The plaintiff further alleges that the defendants, continuing to gradually encroach upon plaintiff's rights in the premises, without distinctly and openly usurping and appropriating the name and style of the plaintiff until the date hereinafter mentioned, did, nevertheless, from time to time increase the number and variety of these fraudulent devices for attracting to themselves the custom of the plaintiff and appropriating the good will of the plaintiff's business.

In this behalf the plaintiff alleges that before the year 1880 the defendants commenced to employ in obscure places about their premises as a subordinate sign, but so placed as not readily to attract attention, the words "Goodyear's Rubber Manufacturing Company."

Some time in the year 1880 the defendants commenced to employ the said last-mentioned name, prominently and conspicuously using for the words "manufacturing company" the abbreviation "m'f'g Co.," by this means producing a name substantially identical with the name of the plaintiff, but at first the prominent and conspicuous use of the said name so constructed was limited to the bill and letter headings used by the defendants for the purposes of their business, and it was used in immediate connection and association with the name "Goodyear's India Rubber Glove Manufacturing Company," which name, as a subordinate name and printed in much smaller type, was printed immediately underneath the former name.

But this association of the two names seemed to a certain extent to maintain a distinction between the plaintiff and the defendants, and to preclude the patrons of the plaintiff and the public from being altogether deceived and misled by the defendants' fraudulent imitation of the plaintiff's name.

11 Moreover, as no change had as yet been made in the principal business signs of the defendants, which still continue to bear the name "Goodyear's India Rubber Glove Manufacturing Company;" a certain amount of protection was in this way still afforded to the plaintiff against the fraudulent and persevering encroachments of the defendants upon the plaintiff's rights in the premises by seeming to maintain a distinction between the plaintiff's and the defendants' names and places of business, although the plaintiff's loss and inconvenience was continually enhanced by the defendants' successive trespasses upon its rights and gradual and persevering attempts, by the devices above described, to deceive the public and take away from the plaintiff its customers, trade, and appropriate the good will of its name and business. The plaintiff endeavored to counteract these efforts of the defendants as far as possible by care and diligence and forbore to seek legal redress for the wrongs hereinbefore set forth and described; but encouraged, as the plaintiff believes, by its forbearance in the premises the defendants, on or about the 1st day of January, 1882, adopted and employed for its principal sign, at its place of business in the city of New York, the name "Goodyear's Rubber M'f'g Co.," employing this name for that purpose over the entrance to its warehouses and in front thereof,

in a very prominent and conspicuous manner, as and for the principal name and style of the defendants' business, the said name being the true and lawful name of the plaintiff in all essential
12 particulars, and being so employed by the defendants for the sole purpose of fraudulently imitating the plaintiff's name for the purpose hereinbefore stated, but still continuing to use in a subordinate way about their premises, and in a manner not to attract particular attention, the true and original business name of the defendants, the "Goodyear's India Rubber Glove Manufacturing Company," and which had theretofore been used for the principal business signs of the defendant, as hereinbefore stated.

Eighth. The plaintiff further avers that the wrongful and unlawful devices and contrivances of the defendants hereinbefore set forth are intended to deceive the public and the customers of the plaintiff by inducing the belief that the defendants' place of business is, in fact, the plaintiff's place of business, and that such devices and contrivances have been and are in great measure successful in deceiving the public and the patrons and customers of the plaintiff as to the identity of the plaintiff and its business, as such devices and contrivances were, as heretofore stated, intended and designed to be; whereby and by reason whereof the plaintiff has sustained and, without the interposition of this court, will continue to sustain great loss and damage, and that the plaintiff is without adequate remedy at law in the premises.

The plaintiff therefore prays judgment that the said defendants, and each of their respective officers and agents, may be perpetually restrained and enjoined from using or employing the said
13 name of "Goodyear's Rubber Manufacturing Company," or any equivalent name as and for their own name, or the style and title of any business carried on by or for them in any manner or form whatsoever, and that the plaintiff may have such further or other relief as, on consideration of the premises, may appear to be just and equitable.

MACFARLAND, REYNOLDS AND LOWREY,
*Plaintiff's Attorneys.*

Office and P. O. address, 59 and 61 Wall street, New York city.

CITY AND COUNTY OF NEW YORK, *ss:*

Frederick M. Shepard, being duly sworn, deposes and says that he is the president of the Goodyear Rubber Company, the plantiff above named; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

FREDERICK M. SHEPARD.

Sworn to before me this 12th day of June, 1882.

RO. L. HARRISON,
*Notary Public, N. Y. Co.*

14 [Endorsed:] N. Y. superior court. Goodyear Rubber Company against Goodyear's India Rubber Glove Manufacturing Company and others. Copy. Summons & complaint. MacFarland, Reynolds & Lowrey, plaintiff's attorneys, 59 & 61 Wall St., N. Y. city.

15 *Petition for Removal of Suit to U. S. Circuit Court.*

Superior Court of the City of New York.

GOODYEAR RUBBER COMPANY, Plaintiff,

*against*

GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, Goodyear's Rubber Manufacturing Company, George M. Allerton, and John D. Vermeule, Defendants.

To the honorable the judges of the superior court of the city of New York:

The petition of Goodyear's Rubber Manufacturing Company, one of the defendants herein, respectfully shows that the above-entitled action is a suit of a civil nature now pending in this court, and that the controversy therein is between citizens of different States—that is to say, this suit is brought by the above-named plaintiff, Goodyear Rubber Company, who at the commencement of this suit was and is a citizen of the State of New York, against the above-named defendant, Goodyear's Rubber Manufacturing Company, who is and — at the commencement of this action a citizen of the State of Connecticut & a corporation organized and doing business under & pursuant to the laws of the State of Connecticut and carrying on business in said State and in the city of New York & elsewhere and continuing a business for many years carried on in the city of New York under said name & designation by the predecessors and associates of this defendant.

That the matter and amount in dispute in such suit, exclusive of costs, exceeds the sum or value of five hundred dollars, the plaintiff demanding that the defendant be enjoined and restrained from the use of a certain name or trade designation, the value of which exceeds the amount of five hundred dollars, and also demanding other relief.

That this suit is brought by the plaintiff for the purpose of restraining or enjoining your petitioner from using or employing the name of "Goodyear's Rubber Manufacturing Company," or any equivalent name, as and for its own or the style and title of any business carried on by or for it in any manner or form whatsoever, and is a suit in which there can be a final determination of the controversy, so far as concerns your petitioner, without the presence of the other defendants as parties in the cause.

16 That your petitioner has made and is about to file herewith and herewith offers a bond, with good and sufficient surety, for its entering in the United States circuit court to be held in the district where this suit is pending, to wit, in the southern

district of New York, on the first day of its session next to be held after the filing of this petition, a copy of the record in this suit, and copies of all process against your petitioner and of all pleadings, depositions, testimony, and other proceedings in the cause concerning or affecting your petitioner, and for paying all costs that may be awarded by the said court, if the said court shall hold that this suit was wrongfully and improperly removed thereto, and also for your petitioner's appearing and entering special bail in this cause, if special bail was originally requisite therein, all as required by the statutes of the United States in such case made and provided.

That this petition is made and presented before or at the term at which said cause could first be tried and before the trial thereof.

Your petitioner therefore prays that this honorable court accept this petition and said bond and proceed no further in this cause against your petitioner, and that, upon filing this petition and said bond, this suit be removed into the circuit court of the United States in and for the southern district of New York, that being the district where this suit is now pending, and that your petitioner have such further and other relief in the premises as may be just.

And your petitioner will ever pray, &c.

Dated the 18th day of July, 1882.

GOODYEAR'S RUBBER M'F'T'G COMPANY,
By GEO. M. ALLERTON, *Pres't.*

BETTS, ATTERBURY & BETTS,
*Atty's for Petitioner.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

George M. Allerton, being duly sworn, deposes and says that he is the president of Goodyear's Rubber M'f't'g Co., one of the defendants and petitioners therein; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

GEO. M. ALLERTON.

Sworn to before me this 18th day of July, 1882.
THOMAS HUNT,
*Notary Public, New York County, New York State.*

17 [Endorsed:] Superior court of the city of New York. Goodyear Rubber Company against Goodyear's India Rubber Glove M'f't'g Co., Goodyear's Rubber Manufacturing Co., George M. Allerton, & John D. Vermeule. Petition for removal of suit into U. S. circuit court by Goodyear Rubber M'f't'g Co. Betts, Atterbury & Betts, attorneys for defendant, 120 Broadway, N. Y. Filed July 20, 1882.

18 *Petition for Removal of Suit to U. S. Circuit Court.*

Superior Court of the City of New York.

GOODYEAR RUBBER COMPANY, Plaintiff,

*against*

GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, Goodyear's Rubber Manufacturing Company, George M. Allerton, & John D. Vermeule, Defendants.

To the honorable the judges of the superior court of the city of New York:

The petition of Goodyear's India Rubber Glove Manufacturing Company, one of the defendants herein, respectfully shows that the above-entitled action is a suit of a civil nature now pending in this court, and that the controversy therein is between citizens of different States—that is to say, this suit is brought by the above-named plaintiff, The Goodyear Rubber Company, who at the commencement of this suit was and is — citizen of the State of New York, against the above-named defendant, Goodyear's India Rubber Glove Manufacturing Company, who is and was at the commencement of this action a citizen of the State of Connecticut & a corporation organized and doing business under and pursuant to the laws of the State of Connecticut and carrying on its business in said State and in the city of New York and elsewhere.

That the matter and amount in dispute in such suit, exclusive of costs, exceeds the sum or value of five hundred dollars, the plaintiff demanding that the defendant be enjoined and restrained from the use of a certain name or trade designation, the value of which exceeds the amount of five hundred dollars, and also demanding other relief.

That this suit is brought by the plaintiff for the purpose of restraining or enjoining your petitioner from using or employing the name of Goodyear's Rubber Manufacturing Company or any equivalent name as and for its own or the style and title of any business carried on by or for it in — manner or form whatsoever, and is a suit in which there can be a final determination of the controversy, so far as concerns your petitioner, without the presence of the other defendants as parties in the cause.

19 That your petitioner has made and is about to file herewith and herewith offers a bond, with good and sufficient surety, for its entering in the United States circuit court to be held in the district where this suit is pending, to wit, in the southern district of New York, on the first day of its session next to be held after the filing of this petition, a copy of the record in this suit and copies of all process against your petitioner, and of all pleadings, depositions, testimony, and other proceedings in the cause concerning or affecting your petitioner, and for paying all costs that may be awarded by the said court if the said court shall hold that this suit was wrong-

fully and improperly removed thereto, and also for your petitioner's appearing and entering special bail in this cause, if special bail was originally requisite therein, all as required by the statutes of the United States in such case made and provided.

That this petition is made and presented before or at the term at which said cause could first be tried and before the trial thereof.

Your petitioner therefore prays that this honorable court accept this petition and said bond and proceed no further in this cause against your petitioner, and that upon filing this petition and said bond this suit be removed into the circuit court of the United States in and for the southern district of New York, that being the district where this suit is now pending, and that your petitioner have such further and other relief in the premises as may be just.

And your petitioner will ever pray, &c.

Dated 18th day of July, 1882.

GOODYEAR INDIA RUBBER GLOVE M'F'G CO.,
By GEO. M. ALLERTON, *Pres't.*

BETTS, ATTERBURY & BETTS,
*Att'ys for Petitioner.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

George M. Allerton, being duly sworn, deposes and says that he is the president of Goodyear India Rubber Glove M'f'g Co., one of the defendants and petitioners herein; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

(Signed) GEORGE M. ALLERTON.

Sworn to before me this 18th day of July, 1882.

[L. S.] THOMAS HUNT,
*Notary Public, New York County, New York State.*

20 [Endorsed:] Superior court of the city of New York. Goodyear Rubber Company against Goodyear's India Rubber Glove M'f'g Co., Goodyear's Rubber M'f'g Co., George M. Allerton, John D. Vermeule. Petition for removal of suit into U. S. circuit court by India R. & G. Co. Betts, Atterbury & Betts, attorneys for defendant, 120 Broadway, N. Y. Filed July 20th, 1882.

21 *Bond on Removal of Suit into U. S. Circuit Court.*

Superior Court of the City of New York.

GOODYEAR RUBBER COMPANY, Plaintiff,
*against*
GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, Goodyear's Rubber Manufacturing Company, George M. Allerton, and John D. Vermeule, defendants.

Know all men by these presents that Goodyear'- Rubber Manufacturing Company, as principal, and John K. Ford, of the city of New York, and William G. Perris, of the city of New York, as sureties, are held and firmly bound unto Goodyear Rubber Company, of the city of New York, in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Goodyear Rubber Company, etc., executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 19th of July, 1882.

GOODYEAR'S RUBBER M'F'G CO.,
By GEO. M. ALLERTON, *Pres't.* [SEAL.]
JOHN K. FORD. [SEAL.]
WM. G. PERRIS. [SEAL.]

Whereas a suit has been commenced in the superior court of the city of New York by the said Goodyear Rubber Company, a citizen of the State of New York, against the said Goodyear's Rubber Manufacturing Company, a citizen of the State of Connecticut, and the matter in dispute in said action exceeds, exclusive of costs, the sum or value of five hundred dollars, and said suit is brought for the purpose of enjoining and restraining said defendant from using or employing the name of "Goodyear's Rubber Manufacturing Company," or any equivalent name as and for its own, or the style or title of any business carried on by or for it, in any manner or form whatsoever, and is a suit in which there can be a final determination of the controversy, so far as concerns him, without the presence of the other defendants as parties to the cause; and

Whereas the said defendant is about to present its petition, pursuant to the act of Congrees in such case made and provided, for the removal of the said cause into the circuit court of the United States next to be held after the filing of the petition for such removal in and for the southern district of New York, in the second circuit, that being the district where the said suit is now pending:

22 Now, therefore, the condition of the above obligation is such that if the said Goodyear's Rubber Manufacturing Company shall enter in the said circuit court of the United States to be held in and for the southern district of New York, in the second circuit, on the first day of its next session, a copy of the record in said suit, and copies of all process against said defendant, and of all

pleadings, depositions, testimony, and other proceedings in the cause concerning or affecting said defendant, and shall well and truly pay all costs that may be awarded in said suit by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, and shall also then and there appear and enter special bail in said suit, if special bail was originally requisite therein, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GOODYEAR'S RUBBER M'F'G CO.,
By GEO. M. ALLERTON, *Pres't.* [SEAL.]
JOHN K. FORD. [SEAL.]
WM. G. PERRIS. [SEAL.]

Sealed and delivered in the presence of—
J. E. HINDON HYDE.
THOMAS HUNT.

STATE OF NEW YORK, } *ss:*
*City and County of New York,* }

John K. Ford, being duly sworn, says that he is one of the sureties in the above bond named, and resides in the city of New York, corner of 21st St. and Broadway; that he is a — holder within this State, and is worth the sum of five hundred dollars over and above all his debts and liabilities, exclusive of property exempt by law from levy and sale under an execution.

JOHN K. FORD.

Sworn to before me this 19th day of July, 1882.
[SEAL.] THOMAS HUNT,
*Notary Public, New York County.*

STATE OF NEW YORK, } *ss:*
*City and County of New York,* }

William C. Perris, being duly sworn, says that he is one of the sureties in the above bond named, and resides in the city of New York, 144 East 128th St.; that he is a — holder within this State, and is worth the sum of five hundred dollars over and above all his debts and liabilities, exclusive of property exempt by law from levy and sale under an execution.

WILLIAM G. PERRIS.

Sworn to before me this 19th day of July, 1882.
THOMAS HUNT,
*Notary Public, New York County.*

23 STATE OF NEW YORK, } *ss:*
*City and County of New York,* }

On this nineteenth day of July, 1882, before me, came the said George M. Allerton, John K. Ford, and William G. Perris, to me severally personally known to be the persons described in and who

executed the above bond, and severally acknowledged to me that they executed the same for the uses and purposes therein expressed.

[SEAL.] THOMAS HUNT,
*Notary Public, New York County.*

24 [Endorsed:] Superior court of the city of New York. Goodyear Rubber Company against Goodyear's India Rubber Glove M'f'g Co., Goodyear's Rubber M'f'g Co., George M. Allerton, and John D. Vermeule. Bond on removal to U. S. circuit court. Goodyear Rubber M'f'g Co. Betts, Atterbury & Betts, attorneys for defendant, 120 Broadway, N. Y. I accept and approve of the within bond. W. H. Arnoux. Dated 20 July, 1882. Filed July 20, 1882.

25 *Bond on Removal of Suit into U. S. Circuit Court.*

Superior Court of the City of New York.

GOODYEAR RUBBER COMPANY, Plaintiff,
*against*
GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, Goodyear's Rubber Manufacturing Company, George M. Allerton, and John D. Vermeule, Defendants.

Know all men by these presents that Goodyear's India Rubber Glove Manufacturing Company, as principal, and John K. Ford, of the city of New York, and William G. Perris, of the city of New York, as sureties, are held and firmly bound unto Goodyear Rubber Company, of the city of New York, in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Goodyear Rubber Company, its executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 19th day of July, 1882.

GOODYEAR INDIA RUBBER GLOVE M'F'G CO.,
By GEO. M. ALLERTON, *Pres't.* [L. S.]
JOHN K. FORD. [L. S.]
WM. G. PERRIS. [L. S.]

Whereas a suit has been commenced in the superior court of the city of New York by the said Goodyear Rubber Company, a citizen of the State of New York, against the said Goodyear's India Rubber Glove Manufacturing Company, a citizen of the State of Connecticut, and the matter in dispute in said action exceeds, exclusive of costs, the sum or value of five hundred dollars, and said suit is brought for the purpose of enjoining and restraining said defendant from using or employing the name of "Goodyear's Rubber Manufacturing Company," or any equivalent name, as and for its own, or the style and title of any business carried on by or for it in any manner or form whatsoever, and is a suit in which there can be a final determination of the controversy, so far as concerns it, without the presence of the other defendants as parties to the cause; and

Whereas the said defendant is about to present its petition, pursuant to the act of Congress in such case made and provided, for the removal of the said cause into the circuit court of the United States, next to be held after the filing of the petition for such removal, in and for the southern district of New York, in the second circuit, that being the district where the said suit is now pending:

26 Now, therefore, the condition of the above obligation is such that if the said Goodyear's India Rubber Manufacturing Company shall enter in the said circuit court of the United States, to be held in and for the southern district of New York, in the second circuit, on the first day of its next session, a copy of the record in said suit and copies of all process against said defendant and of all pleadings, depositions, testimony, and other proceedings in the cause concerning or affecting said defendant, and shall well and truly pay all costs that may be awarded in said suit by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, and shall also then and there appear and enter special bail in said suit if special bail was originally requisite therein, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GOODYEAR'S INDIA RUBBER GLOVE M'F'G CO.,
By GEO. M. ALLERTON, *Pres't.* [SEAL.]
JOHN K. FORD. [SEAL.]
WM. G. PERRIS. [SEAL.]

Sealed and delivered in the presence of—
J. E. HINDON HYDE.
THOMAS HUNT.

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

John K. Ford, being duly sworn, says that he is one of the sureties in the above bond named and resides in the city of New York, corner of 21st and Broadway; that he is a freeholder within this State and is worth the sum of five hundred dollars over and above all his debts and liabilities, exclusive of property exempt by law from levy and sale under an execution.

JOHN K. FORD.

Sworn to before me this 19th day of July, 1882.
[SEAL.] THOMAS HUNT,
*Notary Public, New York County.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

William G. Perris, being duly sworn, says that he is one of the sureties in the above bond named and resides in the city of New York, 144 East 128 St.; that he is a — holder within this State and is worth the sum of five hundred dollars over and above all his

debts and liabilities, exclusive of property exempt by law from levy and sale under an execution.

WM. G. PERRIS.

Sworn to before me this 19th day of July, 1882.
[SEAL.] THOMAS HUNT,
*Notary Public, New York County.*

27 STATE OF NEW YORK, } ss:
*City and County of New York,* }

On this nineteenth day of July, 1882, before me came the said George M. Allerton, John K. Ford, and William G. Perris, to me severally personally known to be the persons described in and who executed the above bond, and severally acknowledged to me that they executed the same for the uses and purposes therein expressed.
[SEAL.] THOMAS HUNT,
*Notary Public, New York County.*

28 [Endorsed:] Superior court of the city of New York. Goodyear Rubber Company against Goodyear's India Rubber Glove M'f'g Co., Goodyear's Rubber M'f'g Co., George M. Allerton, and John D. Vermeule. Bond on removal to U. S. circuit court. G. India R. G. M'f'g Co. Betts, Atterbury & Betts, attorneys for defendant, 120 Broadway, N. Y. I accept and approve of the within bond. Wm. H. Arnoux, J. Dated ——, 188-. Filed July 20, 1882.

29 *Bond on Removal of Suit into U. S. Circuit Court.*

Superior Court of the City of New York.

GOODYEAR RUBBER COMPANY, Plaintiff,

*against*

GOODYEAR'S INDIA RUBBER GLOVE M'F'G CO., GOODYEAR'S RUBBER M'F'G CO., GEORGE M. ALLERTON & JOHN D. VERMEULE, Defendants.

Know all men by these presents that George M. Allerton, as principal, and John K. Ford, of the city of New York, and William G. Perris, of the city of New York, as sureties, are held and firmly bound unto Goodyear Rubber Company, of the city of New York, in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Goodyear Rubber Company, its executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 19th day of July, 1882.

GEO. M. ALLERTON. [L. S.]
JOHN K. FORD. [L. S.]
W. G. PERRIS. [L. S.]

Whereas a suit has been commenced in the superior court of the city of New York by the said Goodyear Rubber Company, a citizen of the State of New York, against the said George M. Allerton, citizen of the State of Connecticut, and the matter in dispute in said action exceeds, exclusive of costs, the sum or value of five hundred dollars, and said suit is brought for the purpose of enjoining and restraining said defendant from using or employing the name of Goodyear's Rubber Manufacturing Company or any equivalent name as and for his own or the style and title of any business carried on by or for him in any manner or form whatsoever, and is a suit in which there can be a final determination of the controversy, so far as concerns him, without the presence of the other defendants as parties to the cause; and

Whereas the said defendant is about to present his petition, pursuant to the act of Congress in such case made and provided, for the removal of the said cause into the circuit court of the United States next to be held after the filing of the petition for such removal in and for the southern district of New York, in the second circuit, that being the district where the said suit is now pending:

Now, therefore, the condition of the above obligation is such that if the said George M. Allerton shall enter in the said circuit court of the United States to be held in and for the southern district of New York, in the second circuit, on the first day of its next session, a copy of the record in said suit and copies of all process against said defendant and of all pleadings, depositions, testimony, and other proceedings in the cause concerning or affecting said defendant, and shall well and truly pay all costs that may be awarded in said suit by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, and shall also then and there appear and enter special bail in said suit if special bail was originally requisite therein, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GEO. M. ALLERTON. [SEAL.]
JOHN K. FORD. [SEAL.]
WM. G. PERRIS. [SEAL.]

Sealed and delivered in the presence of—
J. E. HENDON HYDE.
THOMAS HUNT.

STATE OF NEW YORK, }
*City and County of New York,* } ss:

John K. Ford, being duly sworn, says that he is one of the sureties in the above bond named, and resides in the city of New York, corner of 21st & Broadway; that he is a freeholder within this State, and is worth the sum of five hundred dollars over and above all his debts and liabilities, exclusive of property exempt by law from levy and sale under an execution.

JOHN K. FORD.

Sworn to before me this 19th day of July, 1882.
[SEAL.] THOMAS HUNT,
*Notary Public, New York County.*

STATE OF NEW YORK, } ss:
*City and County of New York,* }

Wm. G. Perris, being duly sworn, says that he is one of the sureties in the above bond named, and resides in the city of New York, 144 East 128th St.; that he is a holder within this State, and is worth the sum of five hundred dollars over and above all his debts and liabilities, exclusive of property exempt by law from levy and sale under an execution.

WM. G. PERRIS.

Sworn to before me this 19th day of July, 1882.
[SEAL.] THOMAS HUNT,
*Notary Public, New York County.*

31 STATE OF NEW YORK, } ss:
*City and County of New York,* }

On this nineteenth day of July, 1882, before me came the said Geo. M. Allerton, John K. Ford, and William G. Perris, to me severally personally known to be the persons described in and who executed the above bond, and severally acknowledged to me that they executed the same for the uses and purposes therein expressed.
[SEAL.] THOMAS HUNT,
*Notary Public, New York County.*

32 [Endorsed:] Superior court of the city of New York. Goodyear Rubber Company against Goodyear's India Rubber Glove M'f'g Co., Goodyear's Rubber M'f'g Co., George M. Allerton, and John D. Vermeule. Bond on removal to U. S. circuit court. George M. Allerton. Betts, Atterbury & Betts, attorneys for defendant, 120 Broadway, N. Y. I accept and approve of the within bond. Wm. H. Arnoux, J. Dated —— —, 188-. Filed July 20th, 1882.

33 *Petition for Removal of Suit to U. S. Circuit Court.*

Superior Court of the City of New York.

GOODYEAR'S RUBBER COMPANY, Plaintiff,
*against*
GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, Goodyear's Rubber Manufacturing Company, George M. Allerton, and John D. Vermeule, Defendants.

To the honorable the judges of the superior court of the city of New York:

The petition of Geo. M. Allerton, one of the defendants herein, respectfully shows that the above-entitled action is a suit of a civil

nature now pending in this court, and that the controversy therein is between citizens of different States—that is to say, this suit is brought by the above-named plaintiff, Goodyear's Rubber Company, who at the commencement of this suit was and is a citizen of the State of New York, against the above-named defendant, George M. Allerton, who is and was at the commencement of this action a citizen of the State of Connecticut.

That the matter and amount in dispute in such suit, exclusive of costs, exceeds the sum or value of five hundred dollars, the plaintiff demanding that the defendants be enjoined and restrained from the use of a certain name or trade designation, the value of which exceeds the amount of five hundred dollars, and also demanding other relief.

That this suit is brought by the plaintiff for the purpose of restraining or enjoining your petitioner from using or employing the name of "Goodyear's Rubber Manufacturing Company," or any equivalent name, as and for his own or the style and title of any business carried on by or for him in any manner or form whatsoever, and is a suit in which there can be a final determination of the controversy, so far as concerns your petitioner, without the presence of the other defendants as parties in the cause.

34 That your petitioner has made and is about to file herewith and herewith offers a bond, with good and sufficient surety, for his entering in the United States circuit court, to be held in the district where this suit is pending, to wit, in the southern district of New York, on the first day of its session next to be held after the filing of this petition, a copy of the record in this suit and copies of all process against your petitioner, and of all pleadings, depositions, testimony, and other proceedings in the cause concerning or affecting your petitioner, and for paying all costs that may be awarded by the said court if the said court shall hold that this suit was wrongfully and improperly removed thereto, and also for your petitioner's appearing and entering special bail in this cause, if special bail was originally requisite therein, all as required by the statutes of the United States in such case made and provided.

That this petition is made and presented before or at the term at which said cause could first be tried and before the trial thereof.

Your petitioner therefore prays that this honorable court accept this petition and said bond and proceed no further in this cause against your petitioner, and that upon filing this petition and said bond this suit be removed into the circuit court of the United States in and for the southern district of New York, that being the district where this suit is now pending; and that your petitioner have such further and other relief in the premises as may be just.

And your petitioner will ever pray, &c.

Dated 18th day of July, 1882.

GEO. M. ALLERTON.

BETTS, ATTERBURY & BETTS,
*Att'ys for Petitioner.*

STATE OF NEW YORK, } ss:
— *and County of New York,* }

George M. Allerton, being duly sworn, deposes and says that he is one of the defendants and petitioners herein; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

GEORGE M. ALLERTON.

Sworn to before me this 18th day of July, 1882.

[SEAL.] THOMAS HUNT,
*Notary Public, New York County, New York State.*

35 [Endorsed:] Superior court of the city of New York. Goodyear Rubber Company against Goodyear's India Rubber Glove Manufacturing Company, Goodyear's Rubber M'f'g Co., George M. Allerton, and John D. Vermeule. Petition for removal of suit into U. S. circuit court. Allerton. Betts, Atterbury & Betts, attorneys for defendant. 120 Broadway, N. Y. Filed July 20, 1882.

36 All which we have caused by these presents to be exemplified and the seal of the superior court of the city of New York to be hereunto affixed.

Witness John J. Freedman, Esquire, presiding judge of our said court, at the city hall of the city of New York, this sixth day of October, A. D. 1882.

THOMAS BOESE, *Clerk.*

Superior Court of the City of New York.

GOODYEAR RUBBER CO.
*ag'st*
GOODYEAR'S I. R. GLOVE M'F'G CO. and O'rs.

I, John J. Freedman, presiding judge of the superior court of the city of New York, do hereby certify that Thomas Boese, whose
37 name is subscribed to the preceding exemplification, is the clerk of the superior court, duly appointed and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the said exemplification is the seal of the said superior court of the city of New York, and that the attestation thereof is in due form of law.

Dated New York, October 6th, 1882.

JNO. J. FREEDMAN,
*Presiding Judge of the Superior Court of the City of New York.*

STATE OF NEW YORK, } ss:
*City and County of New York,* }

—, Thomas Boese, clerk of the superior court of the city of New York, do hereby certify that John J. Freedman, whose name
38 is subscribed to the preceeding certificate, is the presiding judge of the superior court of the city of New York, duly

elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereto set my hand and affixed the seal of the said court this 6th day of October, 1882.

[L. S.] THOMAS BOESE, *Clerk.*

Endorsed: New York superior court. Goodyear Rubber Co. against Goodyear's India Rubber Glove M'f'g Co. and o'rs. Exemplified copy of record and the proceedings U. S. circuit court. Filed Oct. 7th, 1882. Joseph M. Deuel, clerk.

39 U. S. Circuit Court, So. Dist. of New York.

GOODYEAR RUBBER COMPANY

*vs.*

THE GOODYEAR INDIA RUBBER GLOVE CO. *et al.*

This suit having been originally commenced in the superior court of the city of New York, and having been duly removed into this court upon the application of the defendants, and said defendants having this day duly filed in this court an exemplied copy of the record and proceedings in said superior court, and said defendants having duly appeared herein, by Betts, Atterbury & Betts, their attorneys,

40 now, on motion of Betts, Atterbury & Betts, attorneys for said defendants, it is ordered that this cause do proceed in this court as if it had been originally commenced therein, and that the appearance of Betts, Atterbury & Betts as attorneys for said defendants be, and the same hereby is, noted and entered.

Dated New York, Oct. 7th, 1882.

BETTS, ATTERBURY & BETTS,
*Att'ys for Defendants.*

41 The President of the United States of America to Goodyear Rubber Company, Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of December, A. D. 1882, wherever the said court shall then be, to answer a cross-bill of complaint exhibited against you in the said court by Goodyear's India Rubber Glove Manufacturing Company, and do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 17th day of October, in the year one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and seventh.

[L. S.] JOSEPH M. DEUEL, *Clerk.*

BETTS, ATTERBURY & BETTS,
*Compl't's Sol'rs.*

The defendant is required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of December, 1882, or the bill will be taken *pro confesso* against it.

J. M. D., *Clerk.*

42 [Endorsed:] U. S. circuit court. Filed Nov. 15, 1882. Joseph M. Deuel, clerk.

I hereby certify that on the 20th day of October, 1882, at the city of New York, in my district, I personally served the within subpœna in equity upon the within-named The Goodyear Rubber Comp'y by exhibiting to E. M. Shappert, president of said company, the within original and at the same time leaving with him a copy thereof.

Dated Nov. 15, 1882.

HENRY E. KNOX,
*U. S. Marshal, S. D. N. Y.*

43 & 44 *The Cross-Bill of the Defendant, The Goodyear India Rubber Glove Manufacturing Company, to the Bill of the Complainants, The Goodyear Rubber Company.*

Circuit Court of the United States for the Southern District of New York.

GOODYEAR RUBBER COMPANY

*ag'st*

GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, GOODYEAR'S RUBBER MANUFACTURING COMPANY, and GEORGE M. ALLERTON.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

Your orator, humbly complaining, respectfully shows, on information and belief, unto your honor, upon the bill of complaint herein, that the complainant is a corporation organized under the laws of the State of New York and having a place of business in the city of New York, and that your orator is a corporation duly organized under the laws of the State of Connecticut and having places of business at New York and elsewhere.

And your orator further shows that it was so organized and incorporated as aforesaid, in the year 1847, for the purpose of manufacturing and dealing in India-rubber goods made under the patents to Charles Goodyear, the original inventor of vulcanized India-rubber goods, and that in the year 1849 licenses to manufacture such goods under said patents were obtained by your orator and during the existence of said patents your orator manufactured such goods as under said licenses it was licensed to make; and your orator further shows that after the expiration of said patents and ever since the year 1865 your orator has manufactured and sold very largely all kinds and classes of India-rubber goods made from India rubber

treated according to the patents of said Charles Goodyear, and has become widely known throughout the United States and throughout the world as a manufacturer of Goodyear's rubber goods.

And your orator further shows that large capital has been invested in said manufacturing by your orator and that by fair and equitable dealing and by strict integrity and diligence your orator has been for upwards of twenty years the most prominent corporation or association in the city of New York engaged in the
45 manufacture and sale of Goodyear's rubber goods, and for upwards of twenty years, from its wide notoriety as the principal corporation engaged in the sale of rubber goods in New York and elsewhere having the name "Goodyear" as part of its name, has become and been known to the trade generally throughout the world by names abbreviated from its full corporate name, in which the name "Goodyear" in connection with the word company have always uniformly been used as designating your orator, particularly the name of "Goodyear's Rubber Manufacturing Company" and such names as "Goodyear's Rubber Company," or by "Goodyear's Company" or "Goodyear's India Rubber Glove Manufacturing Company."

And your orator further shows that (with occasional and rare interferences with your orator's right, and generally of small dealers) your orator has, by general acquiescence and consent, become lawfully and exclusively possessed of all right and title in and to the use of said name Goodyear's Rubber Manufacturing Company and the name "Goodyear" in connection with the word "company," as above, as its proper title and trade name; and your orator shows that by reason of its extensive business inseparably connected with said names or combinations of names and the good will which has come to be associated therewith and appertains thereto your orator has become possessed of a right of property of great value therein and to the exclusive right of said names as denoting the business carried on by your orator.

And your orator further shows that, as appears by the bill of complainant herein and by admission of the complainant, a right of property of great value is recognized by the complainant, Goodyear Rubber Company, in the use of the words Goodyear company by and in connection with the manufacture of rubber goods by a company, and that the use of such words as a trade mark or as constituting part of the good will of business is a lawful trade
46 name and right of property in the hands of the first adopter thereof or in and to the first company using the same, and your orator alleges that the use of such trade names by your orator has been recognized by the complainant and its predecessors in repeated business transactions.

And your orator further shows that a large part of the correspondence addressed to your orator for upwards of twenty years, purchases from, orders to your orator, and business transactions with it have been in the names aforesaid—that is, the "Goodyear Company" or the "Goodyear Rubber Company" or the "Goodyear Rubber Manufacturing Company" and other similar names abbreviated from your

orator's full corporate name, and your orator has become extensively and generally known by said names, and has and claims a trade mark in and to said names and in and to the good will attaching thereto, especially in and to the name of "Goodyear Rubber Manufacturing Company," which your orator has duly caused to be registered as a trade mark.

And your orator further shows that the complainant herein, for the purpose of injuring your orator's business and diverting trade and profits from your orator, formed themselves into an association or corporation and called said association the "Goodyear Rubber Company," thereby unlawfully endeavoring to deprive your orator of its enjoyment in the right, good will, and properties aforesaid, and greatly injuring its business and trade, to your orator's great damage.

And your orator shows that before such unlawful action of complainant the persons composing said complainant association did business only under the names of the "Rubber Clothing Company" or as F. M. & W. A. Sheppard or as Sheppard & Dudley, and under such names were well known to the trade as a separate corporation or association from your orator; and your orator shows that by such change of name and unlawful action your orator has suffered great damage, as aforesaid.

47 And your orator further shows that at or about the time of the alleged formation of said complainant association your orator vigorously protested against the use of the name "Goodyear Rubber Company" by complainant and warned the complainant of its exclusive control of and property in its said trade name and the good will thereto attached, but that said complainant has, notwithstanding all the facts aforesaid, persisted in calling itself and doing business under the name aforesaid, and by reason of such name has drawn away and diverted to itself your orator's proper trade and business, and has illegitimately represented itself by the names aforesaid, which were well known to be associated with your orator's trade and business.

And your orator further shows that said complainant, by its persistent and unlawful assumption of said names, has received money and checks, has received and opened letters and filled orders, all intended for your orator, and has, by such interference with your orator, derived large profits lawfully appertaining to your orator, to your orator's great damage.

And your orator further shows that the complainant, in order to still further divert your orator's profits and business and to further interfere with and damage your orator, has lately adopted the following devices: Your orator for upwards of five years has had a large and prominent place of business on the corner of Broadway and Broome street, in the city of New York, and there prominently displayed its signs and wares; that owing to the confusion of names unlawfully introduced by the complainant your orator became generally known as the "Goodyear Company" or the "Goodyear Rubber Company" or the "Goodyear Rubber Manufacturing Company" of Broadway, corner of Broome street, thus associating its location

with its ordinary and proper titles; that about the 1st of January, 1882, your orator was, against its wish, compelled to move its
48 place of business from Broadway, corner of Broome street, and your orator is informed and believes that it was compelled so to move at the instance and conspiracy of the complainant.

And your orator shows that with said view of still further interfering with your orator the complainant procured for its place of business a location diagonally opposite to the location formerly occupied by your orator, and has placed on said building a conspicuous sign, to wit, "Goodyear Rubber Company, Broadway, corner of Broome street," thereby intending to represent to the public, to the great damage of your orator, that it, the complainant, was your orator, and so to still further injure and damage your orator.

And your orator still further shows that, as is well known, it has its factories at Naugatuck, in the State of Connecticut, and that the complainant, with the intention of injuring and damaging your orator and diverting trade aforesaid, has falsely represented to the trade that it, the complainant, had its factories at Naugatuck aforesaid, and that thereby and in many other ways your orator has suffered great and irreparable damage.

Wherefore your orator humbly prays—

I. That the Goodyear Rubber Co. aforesaid, its officers and agents, may be perpetually enjoined and restrained from using or claiming the name "Goodyear Rubber Company," and from interfering with your orator's business therewith and thereby.

II. That your orator may have such damages decreed and adjudged against said complainant as it or its associates have suffered by reason of the unlawful and inequitable acts of the complainant in the premises, and may recover such profits as the complainant has realized by or through such unlawful and inequitable acts, and that such damages may be assessed and such profits ac-
49 counted for under the decree of this court, and that a *subpœna ad respondendum* issue out of and under the seal of this honorable court, directed to the complainant, commanding it to appear by a day certain and under a certain penalty, then and there to answer in the premises, and to stand to and abide such order as may be made against it.

III. That your orator may have such other and further relief as may be meet.

And your orator will ever pray, &c.

GOODYEAR'S INDIA RUBBER GLOVE M'F'G CO.,
J. D. VERMEULE, *Vice-Pres.*

BETTS, ATTERBURY & BETTS,
*Solicitors for Orators.*
F. H. BETTS, *Of Counsel.*

CITY AND COUNTY OF NEW YORK, *ss:*

J. D. Vermeule, being duly sworn, deposes and says that he is vice-president of the orator above-named; that he has read the fore-

going cross-bill, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true, and that the reason this verification is by deponent is that the orator above is a corporation, and that his knowledge is derived from the books and transactions of said corporation and from his position as such officer thereof.

J. D. VERMEULE.

Sworn to before me this 16th day of October, 1882.
[L. S.] JOSEPH H. MARVIN,
*Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

[Endorsed:] U. S. circuit court, southern district of New York. Goodyear Rubber Company *vs.* Goodyear's India Rubber Glove Manufacturing Co. Betts, Atterbury & Betts, solicitors for defendants, 120 Broadway, New York. U. S. circuit court. Filed Oct. 16th, 1882. Joseph M. Deuel, clerk.

50 Circuit Court of the United States, Southern District of New York. In Equity.

GOODYEAR RUBBER COMPANY
*vs.*
GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, GOODYEAR'S RUBBER MANUFACTURING COMPANY, *et al.*

The joint answer of the defendants, the Goodyear's India Rubber Glove Manufacturing Company and Goodyear's Rubber Manufacturing Company, to the bill of complaint of Goodyear Rubber Company, complainant.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto these and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, for answer*ing*, say that—

These defendants deny each and every allegation of the bill of complaint not herein and hereby specifically admitted; and these defendants allege that plaintiff has no title as against these defendants to the name claimed by it in the complaint, and has
51 no standing in this court of equity for the reason that it has not done equity, and does not come into this court with clean hands by reason of the following facts and circumstances:

1. The defendant, The Goodyear India Rubber Glove Manufacturing Company, is a corporation organized under the laws of the State of Connecticut and doing business in said State of Connecticut and in the city of New York and in most of the States and Territories

of the United States; that said corporation was duly created and organized under the laws of the State of Connecticut, in the year 1847, and has ever since that date continued to be and has been a body corporate under the laws of said State.

2. These defendants are informed that there is an association or pretended association or company known by the name of Goodyear Rubber Company and claiming to be the plaintiff in this action, but whether said company has been duly organized as a corporation these defendants have no knowledge or information sufficient to form a belief.

3. These defendants allege that said defendant, Goodyear's India Rubber Glove Manufacturing Company, being a corporation organized under the laws of the State of Connecticut, became such for the purpose of manufacturing India-rubber goods under the patents of Charles Goodyear, the original inventor of vulcanized India rubber, and obtained license for the manufacture of such goods in the year 1849, and, during the existence of said Goodyear's patents, manufactured under said patents the kinds and classes of goods which it was licensed to make, and after the expiration of said patents, and ever since the year 1865, said defendant corporation has manufactured and sold very largely all kinds and classes of India-rubber goods made from India rubber treated according to the patents of said Charles Goodyear, and has become widely known throughout the United States and throughout the world as a manufacturer of Goodyear's rubber goods, and that said
52 defendant corporation has been for upwards of twenty years the most prominent corporation or association in the city of New York engaged in the manufacture and sale of Goodyear rubber goods bearing the name of Goodyear as a part of its corporate title or name used in trade, and for upward of twenty years, from its wide notoriety as the principal corporation engaged in the sale of rubber goods in the city of New York having the name of Goodyear as a part of its name, has become and been known to the trade generally by abbreviated popular and generally-used titles of "Goodyear's Rubber Manufacturing Company," or "Goodyear Rubber Company" or "The Goodyear's Company," and by other similar titles abbreviated from the full corporate name aforesaid, in which abbreviated titles the name of "Goodyear" in connection with the word "Company" or "Co.," or in connection with some similar brief letters or words indicating a company engaged in rubber manufacturing, has been the distinguishing characteristic; and though certain dealers (generally small dealers) have occasionally used the name of Goodyear in connection with their business in dealing in India-rubber goods, yet said defendant corporation has, by adoption of said name and acquiescence of the public therein and by general usage, *has* acquired a valuable right and interest in said name as good will of its business and as a trade name, and has enjoyed and exercised the same for upwards of twenty years, and the use of such trade name has been recognized by the plaintiff and its predecessors in repeated business transactions.

And these defendants further show that a large part of the cor-

respondence addressed to said defendant corporation for upwards of twenty years, and purchases from, orders to, and business transactions with said defendant corporation for the same length of time has been with it by and in the name of the Goodyear Rubber
53 Company or Goodyear's Rubber Manufacturing Company or Goodyear's Company, or other similar abbreviated title as aforesaid, and said defendant has become known generally to the trade by said mark, and has and claims a trade mark in and to said names, and has and claims the good will attaching to said names, and especially in and to the most generally-used name of "Goodyear's Rubber Manufacturing Company," which last name said defendant corporation has duly caused to be registered as a trade mark.

And these defendants fully show that, with the view of protecting said name or names, several of the stockholders and managers of the said defendant, The Goodyear India Rubber Glove Manufacturing Company, on or about the 23d day of March, 1873, filed a certificate of incorporation under and pursuant to the laws of the State of New York, in proper offices in said State, and thereby organized a corporation by and under the name of the "Goodyear Rubber Manufacturing Company."

And these defendants further show that said company was organized for the purpose of claiming said name on behalf of said first-named defendant corporation, and said name was thereafter used by said corporation as a corporate name in connection with the business of said first-named defendant, The Goodyear India Rubber Glove Manufacturing Company, as it had been theretofore used by said last-mentioned defendant corporation, The Goodyear India Rubber Glove Manufacturing Company, as a trade mark in connection with its own name, trade, and business.

And these defendants further show that subsequently certain of the organizers of said New York corporation having retired from the business, and for the purpose of continuing the use of said name and further protecting and claiming the name and title by and on behalf of the business carried on and transacted by said defendant corporation, the trustees and managers of said first-named defend-
54 ant corporation proceeded to and did duly organize the defendant corporation, Goodyear's Rubber Manufacturing Company, under the laws of the State of Connecticut, and said last-named defendant, said Connecticut company, is now in active business in connection with said first-named defendant corporation, and has a factory located in the city of New York, and transacts that portion of the business of said first-named defendant corporation which consists in assembling and putting together parts of goods manufactured by said first-named defendant corporation at its factories at Naugatuck, Connecticut.

4. And these defendants further show that the complainant herein has no just or equitable title to use the name claimed in the bill of complaint as against these or any of the defendants, but the facts in relation to said matters are as follows, viz: Prior to the year 1873 the persons composing the corporation or association plaintiff,

now calling itself the Goodyear Rubber Company, did business only under the name of the Rubber Clothing Company or as F. M. & W. A. Sheppard or as Sheppard & Dudley, and as such were well known to the trade as a different corporation or association or firm from said defendant corporation.

5. And these defendants further show that, on or about the first day of January, 1873, the parties now composing the corporation or association calling themselves by the name of plaintiff, but then composing the corporation or association called the Rubber Clothing Company, for the purpose of injuring said defendant corporation and appropriating its well-known trade name and good will, its business, and securing to them illegitimately the business advantages which had grown up and arisen to said first-named defendant corporation by the use of the abbreviated and popular name or names by which it was known as aforesaid, commenced to call themselves a corporation under the name of Goodyear Rubber
55 Company, and, as these defendants have been informed and believe, filed articles of association or incorporation.

And these defendants further show that the defendant, Goodyear India Rubber Glove Manufacturing Company, as soon as informed thereof, protested against said action on behalf of said plaintiff and its projectors and warned them of its exclusive control and property in the trade name aforesaid, and that the name of the plaintiff was an infringement upon the good will and trade name of said defendant corporation.

And these defendants further show that, notwithstanding the facts aforesaid, the plaintiff and its organizers have persisted in calling themselves by and doing business under the name aforesaid, which closely resembles the name of said defendant corporation as the same has been recognized by the public, and has endeavored to draw away the business of said defendant corporation to itself by representing itself to be the company known by the name of the Goodyear Rubber Company or the Goodyear Rubber Manufacturing Company, when, in fact, it was said defendant corporation which was so known, and that said plaintiff has received a large amount of correspondence intended for said defendant corporations, and have received moneys and checks intended for said defendant corporations, and have received and opened letters intended for said defendant corporations, and have received orders intended for said defendant corporations, and, as these defendants are informed and believe, have filled the same and have generally derived large profits, and have very largely interfered with the business of and damaged the said defendant corporations, under constant protest.

And these defendants further show that the plaintiff, in pursuing the intention to interfere with the trade and business of said defendant corporations, *the said plaintiff* has largely adopted the following device. Said defendant, The Goodyear India Rubber Glove
56 Manufacturing Company, has had for upwards of five years past a large and prominent place of business on Broadway, corner of Broome street, in the city of New York, and at said place of business have used as the most prominent sign upon the Broad-

way front of said building the words "Goodyear's India Rubber Glove Manufacturing Company" and the name "Goodyear's Rubber Manufacturing Company."

That, owing to the confusion of names introduced by the plaintiffs, said defendant corporation became known distinctly as the "Goodyear Company" or "Goodyear Rubber Manufacturing Company" or "Goodyear Rubber Company of Broadway, corner of Broome street," and all orders and mail matter addressed to any rubber company at the corner of Broome street and Broadway has by the post-office authorities been sent to these defendants by and with the acquiescence and under arrangement with the plaintiff.

And these defendants further show that on or about the first day of January, 1882, said defendant corporation was against its wish prevented from renewing the lease of its said premises on the corner of Broome street and Broadway, and said premises were rented, notwithstanding its request to the contrary, to other parties, and said defendant corporation was compelled to move its place of business from the corner of Broome street and Broadway to Nos. 503 and 505 Broadway.

That, as these defendants are informed and believe, said defendant corporation was compelled to change its location of business by and at the instance of the plaintiff, and thereupon the plaintiff, with the intention of further interfering with the business of said defendant corporation and appropriating to itself the said defendant's trade and business, moved its place of business from the location for many years previously occupied by it at No. 341 Broadway to a location on the corner of Broome street and Broadway,
57 diagonally opposite to the position formerly occupied by said defendant corporation, and have placed on the front of its building a large and conspicuous sign in the words and figures following, to wit: "Goodyear Rubber Company, Broadway, corner of Broome street," thereby intending to represent to the public, to the damage of said defendant corporation, that it, said plaintiff, was said defendant corporation, and transacted the business known to the public as the business of said defendant corporation, and plaintiff has thereby derived unlawful profits and has further injured and diverted the trade and business of these defendent corporations.

And these defendants further show that the plaintiff, for the purposes aforesaid, has also untruthfully represented to the trade that its factories were and are at Naugatuck, Connecticut, that being the well-known location of the factories of said defendant corporations, and that in many other ways and manners the said plaintiff has endeavored to appropriate and has appropriated the good will and business aforesaid of said defendant corporations, to their great and irreparable damage; all of which acts heretofore stated and referred to have been and are contrary to equity and good conscience.

And these defendants further show that prior to the alleged adoption by the plaintiff of the name of "Goodyear Rubber Company" other dealers in rubber goods in the city of New York had adopted and used in the trade titles closely resembling the alleged name of the plaintiff as designating their several business, to wit, one A. S.

Gatchell, of the city of New York, had so adopted and used the name of "Goodyear Rubber Emporium," and one D. Hodgman, of said city, had so adopted and used the name of the "Goodyear Rubber Works," and other parties had so adopted and used similar names, and defendants allege that, in view of such prior adoption and use, the plaintiff has no right or title to the relief prayed for in the complaint.

58 Wherefore these defendants pray—

I. That the bill of complaint of the plaintiff as against these defendants may be dismissed with costs.

II. That these defendants may have such other and further relief as may be meet.

GOODYEAR'S INDIA RUBBER GLOVE M'F'G CO.
J. D. VERMEULE, *Vice-Pres.*
GOODYEAR'S RUBBER M'F'G CO.
J. D. VERMEULE, *Vice-Pres.*

CITY AND COUNTY OF NEW YORK, }
*Southern District of New York,* } *ss.:*

J. D. Vermeule, being duly sworn, says that he is vice-president of both of the corporations defendants herein; that he has read the foregoing answer, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true, and that the reason this verification is not made by said defendants is that said defendants are corporations, and that his knowledge is derived from the books and accounts and transactions of said defendants and from his position as vice-president of said corporations.

Sworn to and subscribed before me this 16th day of October, 1882.
[L. S.] JOSEPH H. MARVIN,
*Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

(Endorsed:) U. S. circuit court, southern district of New York. Goodyear Rubber Company *vs.* Goodyear's India Rubber Glove Manufacturing Company, Goodyear's Rubber M'f't'g Co., *et al.* Answer of defendant *copartners.* Betts, Atterbury & Betts, solicitors for defendant-. U. S. circuit court. Filed Oct. 16th, 1882. Joseph M. Deuel, clerk.

59 Circuit Court of the United States, Southern District of New York. In Equity.

GOODYEAR RUBBER COMPANY
*against*
GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, GOODYEAR'S RUBBER MANUFACTURING COMPANY, *et al.*

The separate answer of George M. Allerton, one of the defendants herein, to the bill of complaint of The Goodyear Rubber Company, complainant.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, for answering, says that—

This defendant denies each and every allegation of the bill of complaint not herein and hereby specifically admitted, and denies that he is individually responsible for any of the matters or things alleged or complained of in the bill of complaint, and alleges that he is only one of many of the directors or trustees or managers of the defendant corporation hereinafter referred to, and has no power by or of himself to direct or control the action thereof, and has not in fact done so.

Tnis defendant alleges that the plaintiff has no title as against this defendant to the name claimed by it in the complaint,
60 and has no standing in this court of equity, for the reason that it has not done equity and does not come into this court with clean hands by reason of the following facts and circumstances:

1. The defendant, The Goodyear India Rubber Glove Manufacturing Company, is a corporation organized under the laws of the State of Connecticut and doing business in said State of Connecticut and in the city of New York and in most of the States and Territories of the United States; that said corporation was duly created and organized under the laws of the State of Connecticut in the year 1847, and has ever since that date continued to be and has been a body corporate under the laws of said State.

2. This defendant is informed that there is an association or pretended association or company known by the name of Goodyear Rubber Company and claiming to be the plaintiff in this action, but whether said company has been duly organized as a corporation this defendant has no knowledge or information sufficient to form a belief.

3. This defendant alleges that said defendant, Goodyear's India Rubber Glove Manufacturing Company, being a corporation organized under the laws of the State of Connecticut, became such for the purpose of manufacturing India-rubber goods under the patents

of Charles Goodyear, the original inventor of vulcanized India rubber, and obtained license for the manufacture of such goods in the year 1849, and during the existence of said Goodyear's patents manufactured under said patents the kinds and classes of goods which it was licensed to make, and after the expiration of said patents and ever since the year 1865 said defendant corporation has manufactured and sold very largely all kinds and classes of India-rubber goods made from India rubber treated according to the patents of said Charles Goodyear, and has become widely known throughout the United States and throughout the world as
61 a manufacturer of Goodyear's rubber goods, and that said defendant corporation has been for upwards of twenty years the most prominent corporation or association in the city of New York engaged in the manufacture and sale of Goodyear rubber goods bearing the name of Goodyear as a part of its corporate title or name used in trade, and for upwards of twenty years, from its wide notoriety as the principal corporation engaged in the sale of rubber goods in the city of New York, having the name of Goodyear as a part of its name, has become and been known to the trade generally by abbreviated, popular, and generally-used titles of "Goodyear's Rubber Manufacturing Company" or "Goodyear's Rubber Company" or "The Goodyear Company," and by other similar titles abbreviated from the full corporate name aforesaid, in which abbreviated titles the name of "Goodyear" in connection with the word "Company" or "Co.," or in connection with some similar brief letters or words indicating a company engaged in rubber manufacturing, has been the distinguishing characteristic; and though certain dealers (generally small dealers) have occasionally used the name of Goodyear in connection with their business in dealing in India-rubber goods, yet said defendant corporation has, by adoption of said name and acquiescence of the public therein and by general usage, *has* acquired a valuable right and interest in said name as good will of its business and as a trade name, and has enjoyed and exercised the same for upwards of twenty years, and the use of such trade name has been recognized by the plaintiff and its predecessors in repeated business transactions.

And this defendant further shows that a large part of the correspondence addressed to said defendant corporation for upwards of twenty years, and purchases from, orders to, and business transactions with said defendant corporation for the same length of time has been with it by and in the name of the Goodyear's Rubber Company or Goodyear's Rubber Manufacturing Company
62 or Goodyear's Company, or other similar abbreviated title as aforesaid, and the defendant has become known generally to the trade by said name and has and claims a trade mark in and to said names and has and claims the good will attaching to said names, and especially in and to the most generally-used name of "Goodyear's Rubber Manufacturing Company," which last name said defendant has duly caused to be registered as a trade mark.

And this defendant further shows that, with the view of protecting said name or names, several of the stockholders and managers of the

said defendant, The Goodyear India Rubber Glove Manufacturing Company, on or about the 23d day of March, 1873, filed a certificate of incorporation under and pursuant to the laws of the State of New York, in proper offices in said State, and thereby organized a corporation by and under the name of the "Goodyear's Rubber Manufacturing Company."

And this defendant further shows that said company was organized for the purpose of claiming said name on behalf of said first-named defendant corporation, and said name was thereafter used by said corporation as a corporate name in connection with the business of said first-named defendant, The Goodyear India Rubber Glove Manufacturing Company, as it had been theretofore used by said last-mentioned defendant corporation, The Goodyear India Rubber Glove Manufacturing Company, as a trade mark in connection with its own name in trade and business.

And this defendant further shows that subsequently certain of the organizers of said New York corporation having retired from the business, and for the purpose of continuing the use of said name and further protecting and claiming said name and title by and on behalf of the business carried on and transacted by said defendant corporation, the trustees and managers of said first-named defendant corporation proceeded to and did duly organize the defendant
63 corporation, Goodyear's Rubber Manufacturing Company, under the laws of the State of Connecticut, and said last-named defendant, said Connecticut Company, is now in active business in connection with said first-named defendant corporation, and has a factory located in the city of New York, and transacts that portion of the business of said first-named defendant corporation which consists in assembling and putting together parts of goods manufactured by said first-named defendant corporation at its factories at Naugatuck, Connecticut.

4. And this defendant further shows that the complainant herein has no just or equitable title to use the name claimed in the bill of complaint as against this or any of the defendants, but the facts in relation to said matters are as follows, viz: Prior to the year 1873 the persons composing the corporation or association plaintiff, now calling itself the Goodyear Rubber Company, did business only under the name of the Rubber Clothing Company or as F. M. &. W. A. Sheppard or as Sheppard & Dudley, and as such were well known to the trade as a different corporation or association or firm from said defendant corporation.

5. And this defendant further shows that, on or about the first day of January, 1873, the parties now composing the corporation or association calling themselves by the name of plaintiff, but then composing the corporation or association called the Rubber Clothing Company, for the purpose of injuring said defendant corporations and appropriating its well-known trade name and good will of its business and securing to themselves illegitimately the business advantages which had grown up and arisen to said first-named defendant corporation by the use of the abbreviated and popular name or names by which it was known as aforesaid, commenced to call them-

selves a corporation under the name of Goodyear Rubber Company, and, as this defendant has been informed and believes, filed articles of association or incorporation.

64 And this defendant further shows that the defendant, Goodyear's India Rubber Glove Manufacturing Company, as soon as informed thereof, protested against said action on behalf of said plaintiff and its projectors, and warned them of its exclusive control and property in the trade name aforesaid, and that the name of the plaintiff was an infringement upon the good will and trade name of said defendant corporation.

And this defendant further shows that notwithstanding the facts aforesaid the plaintiff and its organizers have persisted in calling themselves by and doing business under the name aforesaid, which closely resembles the name of said defendant corporation, as the same has been recognized by the public, and have endeavored to draw away the business of said defendant corporation to itself by representing itself to be the company known by the name of the Goodyear Rubber Company or the Goodyear Rubber Manufacturing Company, when, in fact, it was said defendant corporation which was so known, and that said plaintiff has received a large amount of correspondence intended for said defendant corporations, and have received money and checks intended for said defendant corporations, and have received and opened letters intended for said defendant corporations, and have received orders intended for said defendant corporations, and, as this defendant is informed and believes, have filled the same, and have generally derived large profits, and have very largely interfered with the business of and damaged the said defendant corporations, under constant protest.

And this defendant further shows that the plaintiff, in pursuing the intention to interfere with the trade and business of said defendant corporations, *the said plaintiff* has largely adopted the following device: Said defendant, The Goodyear India Rubber Glove Manufacturing Company, has had for upwards of five years past a large and prominent place of business on Broadway, corner of

65 Broome street, in the city of New York, and at said place of business have used as the most prominent sign upon the Broadway front of said building the words "Goodyear's I. Rubber G. Manufacturing Company," and the name "Goodyear's Rubber Manufacturing Company."

That owing to the confusion of names introduced by the plaintiff said defendant corporation became known distinctively as the "Goodyear Company" or "Goodyear Rubber Manufacturing Company or Goodyear Rubber Company of Broadway, corner of Broome street," and all orders and mail matter addressed to any rubber company at the corner of Broome street and Broadway has by the post-office authorities been sent to said defendant by and with the acquiescence and under arrangement with the plaintiff.

And this defendant further shows that on or about the first day of January, 1882, said defendant corporation was, against its wishes, prevented from renewing the lease of its said premises on the corner of Broome street and Broadway, and said premises were rented, not-

withstanding its request to the contrary, to other parties, and said defendant corporation was compelled to move its place of business from the corner of Broome street and Broadway to Nos. 503 and 505 Broadway.

That, as this defendant *are* informed and believes, said defendant corporation was compelled to change its location of business by and at the instance of the plaintiff, and thereupon the plaintiff, with the intention of further interfering with the business of the defendant corporation and appropriating to itself the said defendant's trade and business, moved its place of business from the location for many years previously occupied by it at No. 341 Broadway to a location on the corner of Broome street and Broadway, diagonally opposite to the position formerly occupied by said defendant corporation, and have placed on the front of its building a large and conspicuous sign in the words and figures following, to wit: "Goodyear 66 Company, Broadway, corner of Broome street," thereby intending to represent to the public, to the damage of said defendant corporation, that it, said plaintiff, was said defendant corporation, and it transacted the business known to the public as business of said defendant corporation, and plaintiff has thereby derived unlawful profits and has further injured and diverted the trade and business of the defendant corporations.

And this defendant further shows that the plaintiff, for the purposes aforesaid, has also untruthfully represented to the trade that its factories were and are at Naugatuck, Connecticut, that being the well-known location of the factories of said defendant corporation; and that in many other ways and manner the said plaintiff has endeavored to appropriate and has appropriated the good will and business of said defendant corporation to their great and irreparable damage; all of which acts heretofore stated and referred to have been and are contrary to equity and good conscience.

And this defendant further shows that prior to the alleged adoption by the plaintiff of the name "Goodyear Rubber Company" other dealers in rubber goods in the city of New York had adopted and used in the trade titles closely resembling the alleged name of the plaintiff as designating their several businesses, to wit, one A. S. Gatchell, of the city of New York, had so adopted and used the name of "Goodyear Rubber Emporium," and one D. Hodgman, of said city, had so adopted and used the name of the "Goodyear Rubber Works," and other parties had so adopted and used similar names, and defendant alleges that, in view of such prior adoption and use, the plaintiff has no right or title to the relief prayed for in the complaint.

Wherefore this defendant prays—

I. That the bill of complaint of the plaintiff as against this defendant may be dismissed with costs.

II. That this defendant may have such other and further relief as may be meet.

GEORGE M. ALLERTON,
By BETTS, ATTERBURY & BETTS, *Sol'rs.*

67 CITY AND COUNTY OF NEW YORK, } ss:
*Southern District of New York,* }

Frederic H. Betts, being duly sworn, says that he is one of the attorneys for the defendant, George M. Allerton, herein; that he has read the foregoing answer, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; and deponent further says that the reason that this verification is not made by said defendant Allerton is that he is a non-resident, and that deponent's knowledge as to the facts hereinbefore set forth is derived from statements made to deponent by said George M. Allerton.

FREDERIC H. BETTS.

Sworn to and subscribed before me this 16th day of October, 1882.
[L. S.] JOSEPH H. MARVIN,
*Notary Public, Kings Co.*

Certificate filed in N. Y. Co.

Endorsed: U. S. circuit court, southern district of New York. Goodyear Rubber Company *vs.* Goodyear India Rubber Glove M'f't'g Co. *et al.* Answer of George M. Allerton. Betts, Atterbury & Betts, solicitors for defendant, 120 Broadway, New York. U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

68 United States Circuit Court, Southern District of New York.
In Equity.

GOODYEAR RUBBER COMPANY, Complainant,
*against*
GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, GOODYEAR RUBBER MANUFACTURING COMPANY, and GEORGE M. ALLERTON, Defendants.

The replication of Goodyear Rubber Company, complainant, to the joint answer of Goodyear's India Rubber Glove Manufacturing Company and Goodyear Rubber Manufacturing Company, two of the defendants, to the bill of complaint of the above-named complainant.

This repliant, now and at all times hereafter, saving and reserving to itself all and all manner of advantage of exception to the manifold error- and insufficiencies in the said answer contained,
69 for replication thereunto says—.

That it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall

direct, and humbly prays as in and by its said bill, being its complaint in this action as originally instituted, it has already prayed.

MACFARLAND, REYNOLDS & LOWREY,
*Complainant's Solicitors.*

70 W. W. MACFARLAND, *Of Counsel.*

(Endorsed:) U. S. circuit court, so. dist. of New York. Goodyear Rubber Company, complainant, against Goodyear India Rubber Glove Manufacturing Company *et al.*, defendants. In equity. Replication to joint answer of defendant *copartners*. MacFarland, Reynolds & Lowrey, compl't's sol'rs, 59 & 61 Wall St., N. Y. U. S. circuit court. Filed Nov. 6th, 1882. Joseph M. Deuel, clerk.

71 United States Circuit Court, Southern District of New York.
In Equity.

GOODYEAR RUBBER COMPANY, Complainant,

*against*

GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, or Goodyear's Rubber Manufacturing Company, George M. Allerton, & John D. Vermeule, Defendants.

The replication of Goodyear Rubber Company, complainant, to the several answer of John D. Vermeule, one of the defendants, to the bill of complaint of the above-named complainant.

This repliant, now and at all times hereafter, saving and reserving to itself all and all manner of advantage of exception to the manifold errors and insufficiencies in the said answer con-
72 tained, for replication thereunto says that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its bill (being its complaint in this action as originally instituted) it has already prayed.

MACFARLAND, REYNOLDS & LOWREY,
*Complainant's Solicitors.*

73 W. W. MACFARLAND, *Of Counsel.*

(Endorsed:) U. S. circuit court, so. dist. of New York. Goodyear Rubber Co., compl't, against Goodyear India Rubber Glove Manufacturing Co. *et al.*, def'ts. Replication to answer of John D. Vermeule, def't. MacFarland, Reynolds & Lowry, compl't's sol's, 59 & 61 Wall St., N. Y. U. S. circuit court. Filed Nov. 6, 1882. Joseph M. Deuel, clerk.

74 United States Circuit Court, Southern District of New York.
In Equity.

GOODYEAR RUBBER COMPANY, Complainant,
*against*
GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, Goodyear Rubber Manufacturing Company, & George M. Allerton, Defendants.

The replication of Goodyear Rubber Company, complainant, to the several answer of George M. Allerton, one of the defendants, to the bill of complaint of the above-named complainant.

This repliant, now and at all times hereafter, saving and reserving to itself all and all manner of advantage of exception to the manifold errors and insufficiencies in the said answer contained, for replication thereunto says—

75 That it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its bill (being its complaint in this action as originally instituted) it has already prayed.

MACFARLAND, REYNOLDS & LOWREY,
*Complainant's Solicitors.*

76 W. W. MACFARLAND, *Of Counsel.*

Endorsed: U. S. circuit court, so. dist. of New York. Goodyear Rubber Co., compl't, ag'st Goodyear India Rubber Glove Manufacturing Co. *et al.*, def'ts. Replication to answer of George M. Allerton, def't. MacFarland, Reynolds & Lowrey, compl't's sol'rs, 59 & 61 Wall St., N. Y. U. S. circuit court. Filed Nov. 6th, 1882. Joseph M. Deuel, clerk.

77 Circuit Court of the United States for the Southern District of New York.

GOODYEAR RUBBER COMPANY
*against*
GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY, Goodyear's Rubber Manufacturing Company, George M. Allerton, and John D. Vermeule.

The answer of the above-named plaintiff, The Goodyear Rubber Company, to the cross-bill of the above-named defendant, The Goodyear's India Rubber Glove Manufacturing Company.

The plaintiff, now and at all times hereafter, saving to itself all and all manner of benefit and advantage of exception that

78 can or may be taken to the many errors, uncertainties, and imperfections in the said cross-bill contained, for answer thereto, or to so much thereof as the said plaintiff is advised it is material or necessary for it to make answer, answering, saith:

The plaintiff admits that it is a corporation, as in the said cross-bill is alleged, and avers that the allegations in its said bill of complaint in that behalf are true.

The plaintiff has no knowledge and no information sufficient to form a belief as to whether or not the said defendant, The Goodyear India Rubber Glove Manufacturing Company, is a corporation, as in its said cross-bill is alleged, nor as to the said alleged license from the said Charles Goodyear to the said defendant or of the

79 terms thereof, nor as to the particular goods manufactured and sold thereunder or otherwise from time to time by the said defendant, and the plaintiff therefore leaves the defendant to make such proof thereof and of the several matters aforesaid as it may be advised.

The plaintiff has no knowledge and no information sufficient to form a belief touching the allegations of the said defendants in its said cross-bill as to the period of time during which the said defendant has been engaged in the manufacture of all kinds and classes of India-rubber goods made from India rubber treated according to the patents of the said Charles Goodyear, nor as to the extent

80 of its business in the manufacture and sale of such goods, nor as to whether it has been widely known throughout the United States and the world as a manufacturer of such rubber goods, but the plaintiff denies that the said defendant has been for twenty years the most prominent corporation or association in the city of New York engaged in the manufacture and sale of Goodyear's rubber goods.

The plaintiff also denies each and every of the allegations contained in the said cross-bill to the effect that the defendant for upwards of twenty years or for any other period of time, from its wide notoriety as the principal corporation engaged in the sale of rubber goods in New York and elsewhere having the name of Good-

81 year as a part of its name, has become known to the trade generally throughout the world by names abbreviated from its full corporate name, in which the name Goodyear in connection with the word company has always been uniformly used as designating the said defendant, particularly the name of Goodyear's Rubber Manufacturing Company and such names as Goodyear's Rubber Company or Goodyear's Company or Goodyear's India Rubber Glove Manufacturing Company.

And in this behalf the plaintiff avers that the defendant has claimed and claims to be a foreign corporation as aforesaid by the name of the Goodyear's India Rubber Glove Manufacturing Company, deriving its corporate organization and name from the statute laws of the State of Connecticut.

82 That as such foreign corporation and under that name the said defendant commenced and carried on and has continued to carry on its business in the city of New York; that the said de-

fendant never acquired any lawful right to any other name embracing the word Goodyear or otherwise, and no lawful right to employ or use for the purpose of carrying on its corporate business any other name or corporate designation; and the plaintiff is advised that the use and employment by the defendant of the several other names and appellations to which collectively it pretends to a right and title in its said cross-bill was from the beginning and is contrary to law and public policy, deceitful and fraudulent.

And the plaintiff denies that the said defendant has any
83 good will or any right, title, or interest of any kind whatsoever in the said several combinations and collections of names embracing the word Goodyear, as falsely pretended in the said cross-bill.

In this behalf the plaintiff denies that the said defendant has or did at any time have, acquire, or possess any exclusive right to the use of the word or name Goodyear as a component part of a trade or corporate name for any purpose whatsoever.

The plaintiff further avers, in this behalf, that its own corporate name of the Goodyear Rubber Company was acquired, and is now possessed and enjoyed, under and in pursuance of a lawful compliance with the statute laws of this State; that such name is
84 entirely and manifestly distinct and dissimilar from the name of the defendant as such foreign corporation as aforesaid claiming to be organized under the laws of the State of Connecticut, the said Goodyear India Rubber Glove Manufacturing Company, and that so long as the said defendant continued lawfully to use and employ the said corporate name in carrying on its said business, as it was its duty to do, the public was not in anywise misled or deceived in regard to the corporate name and business of the said plaintiff and the said defendant, respectively; that after the incorporation of the plaintiff and after the plaintiff, in the employment of its own rightful corporate name, and none other, had established a large, prosperous, and lucrative business, the
85 defendant company then and for the first time, as more fully and at large set forth in the plaintiff's bill of complaint, began the series of fraudulent devices and contrivances therein complained of for the purpose of confounding in the public mind the plaintiff's identity with the identity of the said defendant, and to assume to itself the various false names and appellations set forth in the plaintiff's bill of complaint and referred to in the said cross-bill, and that it was by such wrongful devices on the part of the said defendant company and for the purposes in the said complaint of the plaintiff set forth at large, and not by any wrongful acts on the part of the plaintiff, that the public has been misled and
86 deceived in respect of the separate corporate and business identity of the said plaintiff and the said defendant, respectively.

The plaintiff denies that it has at any time, in business transactions or otherwise, recognised the rights of the defendant to the use of the name of Goodyear's Rubber Manufacturing Company or any similar name or any name other than its full name and title.

The plaintiff denies that persons constituting or composing the plaintiff company, the said Goodyear Rubber Company, did before the formation of the said plaintiff company, or at any other time, carry on business under the name of "Rubber Clothing Com-
87 pany," F. M. & W. B. Shepard, or as "Shepard and Dudley," as in the said cross-bill of the said defendant company is alleged, and the plaintiff also denies that it has ever at any time changed its name or carried on its said business under any other name or style whatsoever.

The plaintiff admits that letters have from time to time been delivered to the plaintiff which were intended for the said defendant, and that some of such letters enclosed checks; that such letters were opened by the plaintiff under the belief that, being addressed to the plaintiff in its own corporate name, they were intended for the plaintiff, but the plaintiff avers that such letters were immediately upon the discovery that they were intended for the defendant
88 forwarded to the defendant. And the plaintiff avers that the receipt of such letters with their enclosures by the plaintiff and the receipt of letters and enclosures by the defendant intended for the plaintiff have been and are caused by the said defendant's wrongful concealment of its own true corporate name and its fraudulent usurpation and employment of the plaintiff's corporate name, as more fully set forth and complained of in the plaintiff's said bill of complaint.

The plaintiff denies that it had any connection, directly or indirectly, with the removal of the said defendant's place of business from the corner of Broadway and Broome street, in the city
89 of New York, and the plaintiff denies that it has or ever had any other object whatever in placing upon its sign its true name and true location than to correctly and truly inform the public in respect of both.

The plaintiff denies that it ever at any time or in any manner or form represented to the public that it had its factories at Naugatuck, in the State of Connecticut, as alleged by the defendant in its said cross-bill.

And this plaintiff denies all and all manner of unlawful combination and confederacy wherewith it is by the said cross-bill charged, without this, that there is any other matter, cause, or thing in the said cross-bill contained material or necessary for the plaintiff to make answer unto, and not herein and hereby well and suffi-
90 ciently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this plaintiff; all which matters and things this plaintiff is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

GOODYEAR RUBBER CO.,
By F. M. SHEPARD, *President.*

UNITED STATES OF AMERICA.

CITY AND COUNTY OF NEW YORK, } ss:
*Southern District of New York,* }

Frederick M. Shepard, being duly sworn, says that he is the president of the above-named plaintiff, Goodyear Rubber Com-
91 pany; that he has read the foregoing answer to the cross-bill of the defendant, Goodyear India Rubber Glove Manufacturing Company, and knows the contents thereof, and that the same is true to the knowledge of the deponent, except as to the matters therein alleged to be stated upon information and belief, and that as to those matters he believes it to be true.

FREDERICK M. SHEPARD.

Sworn to before me this 9th day of December, 1882.

[L. S.] R. L. HARRISON,
*Notary Public, N. Y. Co.*

(Endorsed:) Circuit court of the United States, so. district of New York. Goodyear Rubber Co. *vs.* Goodyear's India Rubber Glove M'f't'g Co. *et al.* Answer to cross-bill. MacFarland, Reynolds & Lowrey, pl'ff's sols., 59 & 61 Wall St., N. Y. U. S. circuit court. Filed
92 Dec. 12th, 1882. Joseph M. Deuel, clerk.

93 *Replication to Answer of Compl't to Cross-Bill of Def't.*

Circuit Court of the United States for the Southern District of New York.

GOODYEAR RUBBER COMPANY
*vs.*
GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY, Goodyear's Rubber Manufacturing Company, George M. Allerton, and John D. Vermeule.

The replication of Goodyear India Rubber Glove M'f'g Co., defendant, to the answer of Goodyear Rubber Company, respondent to the cross-bill of said defendant.

The repliant, saving and reserving unto itself, now and at all times hereafter, all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, says that it will aver and prove its said cross-bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by the repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things the repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said cross-bill it has already prayed.

Dated New York city, January 24, 1883.

BETTS, ATTERBURY & BETTS,
120 *Broadway, N. Y. City, Solicitors for Defendant.*

[Endorsed:] U. S. circuit court, southern district of New York. Goodyear Rubber Co. *vs.* Goodyear India Rubber Co. & o'rs. Replication of def't, Goodyear India Rubber Glove M'f'g Co., to answer of compl't to said def't's cross-bill. Betts, Atterbury & Betts, 120 Broadway, N. Y. city, solicitors for defendant. U. S. circuit court. Filed Jan'y 24, 1883, Joseph M. Deuel, clerk.

94 United States Circuit Court, Southern District of New York.

GOODYEAR RUBBER COMPANY

*against*

GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, Goodyear's Rubber Manufacturing Company, George M. Allerton, and John D. Vermeule.

Testimony taken before trial on behalf of the defendants, before H. S. Hoyt, Jr., a special examiner to take testimony for the defendants, appointed by an order of this court.

NEW YORK, *June* 7, 1883—11 o'clock a. m.

Adjourned to June 12th, 1883, at 2 o'clock p. m,

NEW YORK, *June* 12th, 1883—2 o'clock p. m.

Adjourned to June 14th, 1883—11 a. m.

NEW YORK, *June* 14, 1883—11 a. m.

Adjourned to June 15th, 1883, at 11 a. m.

95 NEW YORK, *June* 15*th*, 1883—11 a. m.

Adjourned until 2 o'clock p. m.

2 O'CLOCK P. M.

Met pursuant to adjournment.

Present: Frederic H. Betts, Esq., counsel for defendants; Wm. W. MacFarland, Esq., counsel for complainant.

JOHN D. VERMEULE, one of the defendants, a witness produced on behalf of the defendants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

It is agreed that the questions to and answers of the witness be taken subject to any objection, &c., to be made by Mr. MacFarland.

1 Q. What is your name, age, residence, and occupation.

A. John D. Vermeule; I am fifty-five years old and reside in New York city; I am a manufacturer and merchant.

2 Q. Are you connected with the defendant, The Goodyear's India Rubber Glove Manufacturing Company?

A. Yes, sir; I am the president and treasurer of the company.

3 Q. How long have you been president and how long treasurer of said company?

A. I have been president since last December, and treasurer, I think, about four years.

4 Q. In what year did you first become connected with the Goodyear's India Rubber Glove Manufacturing Company?

A. In 1870.

96 5 Q. Under the laws of what State is said corporation organized?

A. Connecticut.

6 Q. When you became first connected with said corporation in the year 1870 what kind of business was it doing?

A. They were manufacturing and selling a general variety of India-rubber goods.

7 Q. Was their manufacture confined to any particular class or classes of rubber goods.

A. It was not confined to any particular class or classes; there were India-rubber goods which they did not make.

8 Q. Please mention some of the more prominent kinds of rubber goods made by the company in 1870.

A. They were making all kinds of clothing for men and horses both, and making hospital sheeting largely; rubber bands and rings, dress shields, gloves, mittens, tubings; I think they were the most prominent kind of goods.

9 Q. Did they deal in other kinds of rubber goods which they did not themselves manufacture; and, if so, in what variety?

A. In all kinds of hard rubber goods in all varieties—made of hard rubber; belting, packing, and hose, boots and shoes, India-rubber toys and balls; I may say a general variety of rubber goods they sold.

10 Q. In what parts of the United States did your said company carry on its business, both in manufacturing and dealing?

A. The manufacturing was carried on at Naugatuck, Connecticut; the direct selling was in New York city.

11 Q. Did the company have any branch stores or agencies; and, if so, where?

A. They had, I think, agencies at Chicago, Cincinnati, and Philadelphia; there may have been others.

97 12 Q. How widely were the customers of said company scattered throughout the United States?

A. My impression is that they were selling in every State in the Union.

13 Q. How did the business of said company compare with that of other concerns in the rubber trade in regard to extent, variety, and notoriety with the public?

A. Well, I should think, favorably.

14 Q. Will you be a little more explicit?

A. I think, as to variety, they dealt the largest in the country, and to the amount of their sales it is very difficult to make a comparison. I have no means of knowing what others were doing. They were certainly well known.

15 Q. At that time was there any other company which was doing a general rubber business which had the name of "Goodyear" as a part of its name or title?

A. There were people doing business here, but whether it was a general rubber business I am inclined to think it was not.

16 Q. Was there any other company that used the name of "Goodyear" as part of its title; and, if so, what was it?

A. I don't know of a single organized company. There was the Goodyear Metallic Rubber Shoe Company.

17 Q. State the nature of the business of the last-named company.

A. The manufacture of boots and shoes exclusively.

18 Q. Do I understand you to say that at the time you became connected with the defendant corporation there was no other organized company which was doing a general rubber business and which had the name of "Goodyear" as a part of its name or title?

A. Yes, sir.

19 Q. As the result of the facts which you have stated, say
98 whether in dealing with your company your company was addressed and spoken of by any other name than its full corporate name or names; and, if so, by what name or names?

Objected to on the ground that the fact that the defendant company was known by another name or names can give it no right of title to any names but its own true name.

A Yes; "The Goodyear's Rubber Company," "India Rubber Manufacturing Company," "The Goodyear's," and "Goodyear's Manufacturing Company."

20 Q. During the years 1871 and 1872, being the first two years after your becoming connected with your company, how generally was your company addressed by abbreviated titles, such as those mentioned in your last answer?

Objected on the ground that the question is irrelevant to the issues.

A. I should think, in a majority of instances of the whole, where we had no control, how they should address us.

21 Q. Can you produce letters addressed to the company during the years 1871 and 1872 showing the abbreviated forms above referred to? If so, please produce them, and state how many letters in each form of title you have discovered in the correspondence of those years.

Same objection.

A. In the first package 107 letters addressed "Goodyear Rubber Company," six "Goodyear R. Company," one "Goodyear Rubber Works," one "Goodyear's R. Company," and the others "The Proprietors of the Goodyear's Patent Rubber Company." These are all dated in the year 1871.

In the second package forty-one letters addressed "The
99 Goodyear Manufacturing Company," seventeen addressed "Goodyear's Rubber Manufacturing Company," eleven addressed "Goodyear's I. R. Manufacturing Company," nineteen ad-

dressed "Goodyear's India Rubber Manufacturing Company." These are all dated in the year 1871.

In the third package twenty-three letters addressed "Goodyear and Company," sixteen addressed "Goodyear Company," two addressed "Messrs. Goodyears," and one "Goodyear's Rubber Company" and one "Mr. Goodyear's Company." These are also all dated in the year 1871.

In the fourth package twenty-two letters addressed "Goodyear," either "Mr. Goodyear" or "Messrs. Goodyear" or "Goodyears." These are also dated in the year 1871.

In the fifth package twenty-one letters addressed "Goodyear's I. R. Company," three "Goodyear's India Rubber Company." These are also all dated in the year 1871.

In the sixth package sixty-two letters addressed "Goodyear's Rubber Company." These are also all dated in the year 1871.

In the seventh package, all of which relates to the year 1872, 501 letters addressed "Goodyear Rubber Company" or "Goodyear's Rubber Company" and one addressed "Goodyear Rubber Works."

In the eighth package 125 letters addressed "Goodyear's Company" and "Goodyears and Company." These also related to the year 1872.

In the ninth package forty-seven letters addressed "Goodyear," "Mr. Goodyear," and "Messrs. Goodyear." These also relate to the year 1872.

In the tenth package 217 letters addressed "Goodyear Ind. R. Co.," "Goodyear India Rub. Co.," and "Goodyear's India Rubber Co." These also relate to the year 1872.

In the eleventh package 74 letters addressed "Goodyear I. R. Company." These also relate to — year 1872.

In the twelfth package 117 letters addressed "Goodyear
100 Manufacturing Company," 43 addressed "Goodyear Rubber Manufacturing Company," 46 addressed "Goodyear's I. R. M'f'g Company," and 73 addressed "Goodyear's India Rubber M'f'g Co," and various contractions of those words. These also all relate to the year 1872.

These letters have been received from all parts of the United States and from many hundreds of correspondents, and are all written in the years 1871 and 1872.

The packages of letters produced by the witness are offered in evidence by the defendants' counsel and are marked "Defendants' Exhibit or Letters of 1871, Packages 1 to 6," respectively, and "Defendants' Exhibit Letters of 1872, Packages 7 to 12," respectively.

22 Q. Have you caused a search to be made among the files of letters addressed to your company in order to discover under what titles it was commonly addressed during the years preceding your connection with it?

A. Yes.

23 Q. Will you please produce the letters referred to in your last answer showing the modifications of the title of the corporate name commonly used in addressing it during those years?

A. I here produce them and they are as follows:

In the thirteenth package one letter addressed "Goodyears;" one letter addressed "Goodyear's I. R. Company;" one letter addressed "Goodyear & Co.;" one letter addressed "Goodyear I. R. Manufacturing Co.;" two letters addressed "Goodyear Rubber Co.;" one letter addressed "Goodyear Rubber Store;" one letter addressed "Goodyear Rubber, &c.;" five letters addressed "Goodyear's India Rubber Co.;" four letters addressed "Goodyear's M'f'g Co.," and three letters addressed "Goodyear's India R. Co." These letters all relate to the year 1862.

101 In the fourteenth package one letter addressed "Goodyear's M. R. Company;" one letter addressed "Goodyear's I. R. M'f'g Co.;" one letter addressed "Goodyear's Co.;" one letter addressed "Mess. Goodyear;" two letters addressed "Goodyear's India Rubber M'f'g Co.;" one letter addressed "Goodyear's Ind. Rubber M'f'g Co.;" one letter addressed "Goodyear's Ind. Rubb. M'f'g Co.;" one letter addressed "Goodyear's India R. M'f'g Co.;" two letters addressed "Goodyear's M. Rub. Co.;" two letters addressed "Goodyear's I. R. Co.;" one letter addressed "Goodyear's Rub. M'f'g Co.;" two letters addressed "Goodyear's Rubber M'f'g Co.;" one letter addressed "Goodyear's Ind. Rubber Co.;" one letter addressed "Goodyear's M. Rubber Co.;" eleven letters addressed "Goodyear's India Rubber Co.;" six letters addressed "Mess. Goodyear & Co.;" two letters addressed "Goodyear's M'f'g Co.," and eleven letters addressed "Goodyear Rubber Co." These letters all relate to the year 1867. There is also contained in the said fourteenth package a letter of the year 1865 addressed "Goodyear's Co."

In the fifteenth package three letters addressed "Goodyear's Ind. R. Co.;" thirty-four letters addressed "Mr. Goodyears;" thirty-five letters addressed "Goodyear's India Rubber M'f'g Co.;" five letters addressed "Goodyears & Co.;" three letters addressed "Goodyear's I. Rubber M'f'g Co.;" one hundred and fifty letters addressed "Goodyear Rubber Co.;" one letter addressed "Goodyear's India Rub. Co.;" forty-five letters addressed "Goodyear's I. R. Co.;" thirty-one letters addressed "Goodyear's Rubber M'f'g Co.;" eighty letters addressed "Goodyear's M'f'g Co.;" one letter addressed "Goodyear's M. Co.;" nine letters addressed "Goodyear's Ind. Rub. M'f'g Co.;" one letter addressed "Goodyear's Ind. M'f'g Co.;" forty-four letters addressed "Goodyear's I. R. M'f'g Co.;" twenty letters addressed "Goodyear Co.;" three letters addressed "Goodyear's India R. Co.;" five letters addressed "Goodyear's;" five letters addressed "Mess. Goodyears;" ten letters addressed "Good-

102 year's R. Co.;" seven letters addressed "Mr. Goodyear & Co.;" forty-nine letters addressed "Goodyear's Rubber Co.;" forty-nine letters addressed "Mess. Goodyear & Co.;" two letters addressed "Goodyear Rub. Co.;" two letters addressed "Goodyear's I. R. M. Co.;" one letter addressed "Goodyear's M'f'g Rubber Co.," and two letters addressed "Goodyear's I. Rubber Co." These letters all relate to the year 1868.

In the sixteenth package one hundred and fourteen letters ad-

dressed "Goodyear's Rubber Co.;" fifteen letters addressed "Goodyear's Rubber M'f'g Co.;" thirty-seven letters addressed "Goodyear's India Rubber M'f'g Co.;" thirty-nine letters addressed "Goodyear's I. R. M'f'g Co.;" twenty-six letters addressed "Goodyear's Ind. Rub. Co.;" fourteen letters addressed "Goodyear's Ind. Rubber Co.;" forty-eight letters addressed "Goodyear & Co.;" nineteen letters addressed "Goodyears & Co.;" sixteen letters addressed "Goodyear Co.;" two letters addressed "Goodyear's Co.;" two letters addressed "Goodyear;" one letter addressed "Goodyear's;" twenty letters addressed "Mr. Goodyear;" thirty-seven letters addressed "Goodyear's I. R. Co.;" fourteen letters addressed "Messrs. Goodyear;" five letters addressed "Goodyear & Co.;" one hundred and thirty-eight letters addressed "Goodyear's India Rubber Co.;" six letters addressed "Goodyear's Ind. R. Co.;" six letters addressed "Goodyear India Rub. Co.;" four letters addressed "Goodyear Rub. Co.," and ninety-one letters addressed "Goodyear's Man'f'g Co. These letters all relate to the year 1869.

In the seventeenth package twenty-five letters addressed "Mess. Goodyear & Co.;" thirty-one letters addressed "Goodyear's India Rubber M'f'g Co.;" one letter addressed "Goodyear's Elastic Goods Co.;" one letter addressed "Goodyear R. Co.;" one letter addressed "Goodyear Rubber Goods Co.;" one letter addressed "Mess. Goodyear & Comp'y, manufacturers of rubber goods;" nine letters
103 addressed "Goodyears & Co.;" seventeen letters addressed "Mr. Goodyear;" nineteen letters addressed "Goodyear's Rubber Man'f'g Co.;" seven letters addressed "Goodyear's;" thirty-two letters addressed "Goodyear's I. R. Co.;" forty-four letters addressed "Goodyear's Man'f'g Co.;" seventy-eight letters addressed "Goodyear's India Rubber Co.;" thirteen letters addressed "Goodyear Rub. Co.;" one hundred and thirty-one letters addressed "Goodyear's Rubber Co.," and thirty-two letters addressed "Goodyear's I. R. M'f'g Co." These letters all relate to the year 1870.

The last-mentioned packages of letters produced by the witness are offered in evidence by the defendants' counsel and are marked "Defendants' Exhibit Letters, Packages 13 to 17," respectively.

Adjourned to Thursday, June 21st, 1883, at 11 a. m.

NEW YORK, *June* 21, 1883, at 11 a. m.

Further adjourned to Monday, June 25, 1883, at 11 a. m.

NEW YORK, *June* 25, 1883, at 11 a. m.

Further adjourned to Thursday, June 28, 1883, at 11 a. m.

NEW YORK, *June* 28, 1883, at 11 a. m.

Met pursuant to adjournment.

Present: C. Wyllys Betts, Esq., counsel for defendants; W. W. MacFarland, Esq., counsel for complainant.

Examination of JOHN D. VERMEULE continued:

104 24 Q. Please state what was the character of the sign used by the defendant company at No. 205 Broadway, and for how long it was used.

A. The word "Goodyear's" was made very prominent on that sign, and "rubber goods of every description" was less prominent on the same sign. This sign was on the top of the building, fronting Broadway, and the words were "Goodyear's" on the first line; on the other line it was either "rubber goods" or "rubber goods of every description."

25 Q. How long had that sign been in use?

A. Well, it was used for fifteen years, to my knowledge, and I think twenty.

26 Q. Did your company have a factory at Naugatuck, Connecticut, and for how many years?

A. Yes, sir; for thirty years or more.

27 Q. Do you know whether the complainant, "The Goodyear Rubber Company," has ever made representations that they have a factory at Naugatuck, Connecticut; and, if so, what do you know about it?

A. They had on their bill-heads "Rubber Clothing Company. Factories in Naugatuck."

28 Q. Can you produce such bill-heads?

A. Yes, sir; I should have said bill-heads and order sheets. I here produce one bill-head and one order sheet, both of which have "Factories at Naugatuck, Conn."

The bill-head and order sheet produced by witness *is* offered in evidence by defendants' counsel, and are marked "Defendants' Exhibit Bill-Head and Order Sheet."

29 Q. Do you know whether the complainant's company made the same representation in regard to the factories in Naugatuck, Conn., in any other way?

A. They had it on their sign at 363, corner of Franklin street, Broadway, this city.

105 30 Q. Do you know about any other sign of the complainant's company with that representation on it?

A. Their sign at their store in St. Louis.

31 Q. Can you produce a photograph of your own, the defendants', sign at No. 205 Broadway, concerning which you have already testified?

A. Yes; here it is.

The photograph produced by the witness is offered in evidence by defendants' counsel and is marked "Defendants' Exhibit Photograph No. 1."

32 Q. And this sign shown in the photograph was used by the defendants how many years?

A. Well, fifteen; probably more than that.

33 Q. Did the defendants at one time have a store at the corner of Broome street and Broadway; and, if so, during what years?

A. Yes, sir; I think from 1876 to 1881.

34 Q. And did they have any sign on that store exhibiting that fact; and, if so, what was it?

A. No.

35 Q. Did they have any sign elsewhere stating that fact?

A. Yes; on all their bill-heads, order sheets, and other printed papers relating to their business.

36 Q. Has the complainant's company used any such sign; if so, how?

A. Yes; they have a gilt sign on the apex of their building at the corner of Broadway and Broome, namely, "Broadway, corner of Broome street."

37 Q. Prior to the organization of the complainant's company under the present title of the "Goodyear Rubber Company" did you ever have any conversation with Mr. Shephard, the president of the "Rubber Clothing Company," regarding a consolidation of that company with your own; and, if so, when was it and what took place?

106 The question is objected to, 1st, because it assumes that the complainant company had formerly existed under some other name and had changed its name; and, 2d, because it is irrelevant and incompetent for the purpose of affecting the rights of the complainant.

A. It was a few months previous to their putting up the signs "Goodyear Rubber Company." Mr. Shephard made a written proposition to consolidate the New York ends of the two concerns, that of the "Rubber Clothing Company" and that of the "Goodyear's India Rubber Glove Manufacturing Company." After consideration we declined. Mr. Shephard asked if we had any proposition to make to bring about the consolidation of the two concerns. We told him we had not. He then took the paper and left.

The complainant repeats the same objection to the witness' answer.

38 Q. Was that the Mr. Shephard who is now present and who is the president of the complainant's company?

A. Yes.

39 Q. How long after this conversation with Mr. Shephard were the signs "Goodyear Rubber Company" put on the store of the said "Rubber Clothing Company?"

A. Perhaps three, possibly six, weeks after.

40 Q. Did you see Mr. Shephard again after these signs were put up; and, if so, when and what occurred?

Complainant's counsel repeats the preceding objections.

A. Yes; I saw him shortly after the signs were put up at his office, and expressed my surprise that he should have used our name in
107 that way. Mr. Shephard replied that we forced him to do it by refusing to entertain any proposition for consolidating the two concerns. I remarked that on that theory he would be

justified in forcing his way into our safe if we refused to give him the contents.

41 Q. Did you, at about that time, apply to counsel for an opinion whether you could prosecute the present complainants for adopting the title "Goodyear Rubber Company;" and, if so, what was their advice?

Question objected to as immaterial, irrelevant, and incompetent.

A. We did apply, and received an opinion that we had a good case, I think.

42 Q. Have you found, during the years since the complainants have used the title "Goodyear Rubber Company," any embarrassment in the business of the defendant by reason of the adoption of that name? And, if so, give instances.

Question objected to on the same grounds as the preceding.

A. Yes; through the mails instances occurred daily where they got our letters and appropriated their contents by filling orders which were intended for us. There was one instance, the Jackson & Woodin Manufacturing Company, whose order they filled; it was plainly addressed to "Goodyear Glove Company." In another instance they filled an order sent to us by telegram by one of our own travelers, signed by him, and there are a number of other instances which I can't state here, but can produce them, if necessary.

The evidence is further objected to on the ground that parol evidence of the contents of the letters, orders, and telegrams is not admissible.

43. Q. Were the orders, letters, and telegrams referred to in your last answer which the complainant company received and
108 appropriated, although intended for your company, ever returned to you by them?

A. The telegram was returned after we threatened to sue them if they did not deliver it to us; the letter from the Jackson & Woodin Manufacturing Company they refused to return. There were many other letters returned to us after they opened them, but as a rule they omitted to return the envelopes in which the letters were received. Many of the letters containing checks or drafts they returned to the senders after opening them, thereby keeping us out of the funds from three to ten days, according to the distance of the residences of the senders were.

Complainant's counsel takes the several preceding objections to this answer.

44 Q. Of what date was this Jackson & Woodin letter?

A. I am not sure whether it was 1878 or 1879; it was midwinter of one of those years.

Defendants' counsel call on complainant to produce said letter.

I wish further to state that that letter is or was in the possession of Mr. Shephard. I called upon him at the time, and he showed me the letter filed away, and declined to return it, as he didn't wish

to spoil his file. I saw it was addressed to "Goodyear I. R. Glove Company."

45 Q. Since the complainant adopted the name "Goodyear Rubber Company" have you continued to notify the public in any way that you claimed as your title the word "Goodyear" in connection with other words signifying "company," such as your corporate title, "Goodyear's Rubber Manufacturing Company;" if so, how and for what reason?

Objected to on the ground that it is irrelevant and immaterial.

109 A. Yes; we have issued notices—enclosed one in each of our letters going out of the house. The object was to prevent the confusion of names brought about by the action of Mr. Shephard in putting up his signs and placing in his bill-heads the name "Goodyear Rubber Company."

46 Q. Can you produce some of these notices?

A. Yes; here are two of them.

The notices produced by witness *is* offered in evidence by defendants' counsel and are marked "Defendants' Exhibit Notices No. 1 and No. 2."

47 Q. Have you found it necessary during the years since the complainant adopted the title "Goodyear Rubber Company" to insist more and more strongly in your notices to the public that your company was entitled to the good will of that name or similar name? And, if so, please explain why.

Complainant's counsel takes the same objections as the last preceding to the question.

A. Yes; for the natural reason that Mr. Shephard was pressing us to the wall by misleading our customers, and we felt that we must emphasize the fact more and more in order to hold our trade.

48 Q. The complainants have put in evidence a contract between the defendants and the Rubber Clothing Company and Goodyear Rubber Company in regard to dress shields. Will you please explain why that contract was entered into by your company?

Complainant's counsel objects to the question as immaterial and irrelevant.

A. That was a valuable contract, and we found it necessary, after mature consideration, to include the "Goodyear Rubber Company" in the contract in order to bind Mr. Shephard, who was president of both the "Rubber Clothing Company" and the said "Goodyear Rubber Company." I mean that he was doing the same sort of business under each of these names, and that he might have
110 broken the contract as president of the "Goodyear Rubber Company," in which case we considered we might have no redress.

49 Q. You did not then intend the signing of this contract as in any way a recognition of their right to use the name "Goodyear Rubber Company?"

Same objection as the preceding.

A. No; we continued our protest after signing that contract the same as before.

Adjourned to Tuesday, July 10, 1883, at 11 a. m.

NEW YORK, *July 10th*, 1883—11 a. m.

Adjourned to July 19th, '83, at 11 a. m.

NEW YORK, *July 19th*—11 a. m.

Adjourned to July 23d, '83, at 11 a. m.

NEW YORK, *July 23d*—11 a. m.

Adjourned to July 24th, at 11 a. m.

NEW YORK, *July 24th*, 1883.

Present: Counsel as before.

JOHN D. VERMEULE cross-examined by Mr. MACFARLAND:

50 X Q. At what date did you become president of the Goodyear's India Rubber Glove Manufacturing Company?

A. My recollection is it was the 9th of December, 1882.

51 X Q. The corporation is organized under the laws of the State of Connecticut?

111 A. Yes, sir.

52 X Q. (Handing witness paper.) Is the paper which I hand you a copy of the articles of association?

A. Yes, sir; it seems to be.

Paper offered in evidence and marked Plaintiff's Exhibit No. 1, July 24th, 1883.

53 X Q. Are you able to state when that corporation first established a place of business in the city of New York?

A. No; I could not with exactness state the date.

54 X Q. Approximately?

A. I should think it was previous to 1850.

55 X Q. Are you able to state the place?

A. It was in John street, but I do not recall the number.

56 X Q. How long did the corporation continue to carry on business in John street?

A. Several years.

57 X Q. You are not able to state approximately the number?

A. No; I am not.

58 X Q. Are you able to state the character of the business that is carried on in John street?

A. In John street it was principally rubber gloves.

59 X Q. Are you able to state when it removed from John street, and to where it removed?

A. I can state where—205 Broadway.

60 X Q. Are you able to state when it removed to 205 Broadway?

A. I think it is 25 years ago.

61 X Q. About 25 years ago?

A. About 25 years ago.

62 X Q. Has it remained in that location since?

A. Yes, sir; with other locations.

63 X Q. Are you able to state at what period the company commence to deal in other rubber goods than gloves?

A. My recollection is that it was about 1856.

112 64 X Q. Gradually, I suppose, augmenting the diversity and the expense of its dealings in rubber goods?

A. My impression is that it was limited to Mr. Goodyear's patents, and when they ran out it immediately went into general variety.

65 X Q. The precise dates you are not able state?

A. No, sir.

66 X Q. Did the company at some time establish, and can you state when, another place of business on Broadway in addition to 205 Broadway?

A. They did; yes, sir; and it was in 1876.

67 X Q. At what place?

A. At 488, 490, and 492 Broadway, corner of Broome street.

68 X Q. Are you able to state what was the business sign employed by the company in John street?

A. No, sir; I am not.

69 X Q. Are you able to state what was the first business sign employed by the company at 205 Broadway?

A. As well as I can remember, it was "Goodyear's," prominent, and "rubber goods," under, on the second line; that was on the top of the building, and the sign down below was "Goodyear's," prominent, and "India Rubber Glove Manufacturing Company" in less prominent letters.

70 X Q. The sign on the top of the building consisted of the words "Goodyear's rubber goods?"

A. Yes, sir; "Goodyear's" was the top line and "rubber goods," under "Goodyear's," was prominent—just as it is now, I think.

71 X Q. Making two lines or three?

A. Two lines, I think.

72 X Q. Since the date you referred to in your last answer have any changes been made in the business signs at 205 Broadway?

A. Yes, sir.

73 X Q. Please to state what.

113 A. The principal sign over the door is "Goodyear's Rubber Manufacturing Company" and the hanging sign is "Goodyear's rubber goods of every description," I think.

74 X Q. When was that change made?

A. Within a month or six weeks.

75 X Q. How long did the company retain its place of business at the corner of Broadway and Broome street?

A. About five years.

76 X Q. Will you describe the first business signs employed at that place?

A. The sign over the Broadway entrance was "Goodyear's India Rubber Glove Manufacturing Company." On one side of the door was "Goodyear's Rubber Manufacturing Company" and on the other

side "Goodyear's India Rubber Glove Manufacturing Company." The sign on the Broome-street side was "Goodyear's rubber goods of every description," I think.

77 X Q. Were any changes made in the business signs at that place of business during its occupancy by your company?

A. My recollection is that there was not, sir.

78 X Q. When did your company remove from that place of business?

A. January the 1st, 1881.

79 X Q. You have stated, Mr. Vermeule, in the answer of your company, which you verify on information and belief, that you were compelled to make that removal owing to the action of the plaintiff company. Will you be good enough to state the source of that information and its character?

A. Well, the complainant company imitated our signs. They received and opened our letters, which afterwards came to our hands, and I believe—at least, it has been so represented to me—that they represented to the trade generally that we were one concern on certain occasions.

80 X Q. Is that the information and all the information
114 upon which you testified to in your answer which you believed caused your removal from the place of business, corner of Broadway and Broome street?

A. I did not quite get that question in the first place.

Q. (Question repeated.)

A. That information came to me principally from Mr. Allerton, who is now dead, the former president.

81 X Q. Did he give you the source of his information?

A. Well, he did not, fully.

82 X Q. Will you be good enough to state who represented to you that the complainant company claimed to be one concern with your own?

A. Well, the clerks in our store informed me that customers had so represented to them.

83 X Q. Have you any other source of information?

A. Well, yes, we have.

84 X Q. You have said that you had been informed that the complainant company represented itself to be the same concern as your own and claimed that together you constituted one concern; that is what you said, is it not?

A. Yes, sir.

85 X Q. What I ask you is to state who told you that.

A. A young man we have in our employ named Frederick W. Stevenson.

86 X Q. When?

A. Well, this particular case was within six or eight months, I think.

87 X Q. Referring to your present place of business, Mr. Vermeule, will you please to describe the signs which you employed at that place on your removal from the corner of Broadway and Broome street?

A. Well, we have the principal sign over the door there, "Goodyear's Rubber Manufacturing Company," and the standing
115 sign on the sidewalk near the building was the same. The side signs were "Goodyear's India Rubber Glove Manufacturing Company" and "Goodyear's Rubber Manufacturing Company."

88 X Q. Has there been any recent changes made in those signs?

A. No, sir; there haven't been any made since these I describe. The Mercer-street end of the building has the old sign that was on the Broadway store, corner of Broome street.

89 X Q. Are you able to describe the bill and letter heads that the company employed whilst it carried on business exclusively at 205 Broadway?

A. I think they had the full "Goodyear's India Rubber Glove Manufacturing Company"—up to 1873 at any rate.

90 X Q. Goodyear's India Rubber Glove Manufacturing Company up to 1873?

A. Yes, sir.

91 X Q. And from that point a change?

A. I could not remember whether it was made before we left 205 or after.

92 X Q. You have in your possession some of those bills?

A. I think we have, sir; yes.

93 X Q. Would you kindly produce, or send to your counsel for production, a specimen of those bills?

A. Yes, sir; I will make an effort to find some. Would you like them now?

Mr. MacFarland: Not at this moment. It will answer me perfectly well if you will send them down. I shall be glad to have you produce a specimen of the letter-heads and bill-heads employed by your company between the years 1865 and 1870, if it is not too much trouble.

The Witness: Yes, sir; I think I can produce them.

116 94 X Q. You have stated in your answer that your company in the course of time came to be known by various abbreviated titles, describing them. Does your company claim title to all the various abbreviated names by which it was addressed?

A. We claim title to "Goodyear's Manufacturing Company"—"Goodyear's" connected with "manufacturing."

95 X Q. That is not quite an answer to my question.

A. It claims title to everything with the name of Goodyear in connection with manufacturing of rubber goods.

96 X Q. Then your company claims title to every name which embraces the name Goodyear?

A. Yes, sir. I want to say here that I do not quite understand what you mean by claiming a title to everything. I want to say we were the only company known as Goodyear's, and there was no confusion in the post office about the letters previous to Mr. Shepard's organizing his company.

97 X Q. My question is whether you claim an exclusive right to the

use of every name which embraces the word "Goodyear" in connection with the manufacturing and sale of rubber goods?

A. Goodyear's? Yes, sir.

98 X Q. You asserted that claim to Mr. Shepard shortly after the organization of the complainant company, did you not?

A. I do not think I did in that way.

99 X Q. At all events, you asserted a claim of exclusive right and title to the name of the Goodyear Rubber Company, did you not?

A. Personally I did not, sir. I have no recollection of doing so.

100 X Q. I find this answer to the 40th interrogatory, which is as follows: "Did you see Mr. Shepard again after the signs were put up; and, if so, when, and what occurred? A. Yes, sir; I saw him shortly after the signs were put up, at his office, and ex-
117 pressed my surprise that he should have used our names in that way." That is true?

A. That is true.

101 X Q. You then considered that the name of the Goodyear Rubber Company was your name?

A. Anything that had Goodyear connected with it had been ours, and letters had been sent to us from the other company.

102 X Q. Then you did not ever consider and claim that the name of the Goodyear Rubber Company was your name?

A. I considered that Mr. Shepard had used our name in a way to divert our trade.

103 X Q. That hardly answers my question. My precise question is whether you did or did not at that time claim that the name Goodyear Rubber Company was your name?

A. We claimed that it was so similar to our name that it would divert our business and make confusion in the mails.

104 X Q. You claimed at the same time that the name Goodyear Rubber Manufacturing Company was your name in the same sense that the name of the Goodyear Rubber Company was your name?

A. Well, I suppose it would have the same tendency to divert and confuse.

105 X Q. Your claim would in the same sense apply to both names?

A. I should think it would.

106 X Q. And your claim would rest in both cases upon the same foundation?

A. Well, it strikes me so; yes, sir.

107 X Q. You took from time to time, with reference to the public, such measures as you thought would protect you in your superior right to the use of those names, did you not?

A. Yes, sir.

108 X Q. In every way that occurred to you as liable to be most efficient?

A. Yes, sir; I think so.

118 109 X Q. Did you ever know of a concern by the name of "Goodyear's Elastic Fabric Company?"

A. I don't remember.

110 X Q. Was there not such a concern in existence in this city at one time?

A. I really have no recollection of it. There was a "Boston Elastic Company."

111 X Q. Was there such a concern in the city as the "Goodyear Rubber Works?"

A. I think it is very likely there was. There were various signs with "Goodyear" on in the city.

112 X Q. You don't remember this particular concern?

A. I haven't any distinct recollection about it.

113 X Q. Have you a distinct recollection of the "Goodyear's Rubber Emporium?"

A. I think that was in Cortlandt street, kept by Mr. Gatchel.

114 X Q. Did you yourself select the various exhibits which have been here produced, indicating the various names by which your company has from time to time been addressed?

A. Yes, sir; I superintended it; I had assistance.

115 X Q. By which, I suppose, you mean you laid the principle by which the selection should be made without performing the manual labor?

A. Yes; I think so.

116 X Q. Are you able to state how many letters your company receives in the course of a year?

A. Well, no.

117 X Q. It would reach many thousands, would it not?

A. Yes, sir.

118 X Q. And that same observation would hold true of your company in respect of many years gone by?

A. Well, yes, I think so—thousands.

119 X Q. You selected for exhibiton here out of the mass of your correspondence those letters intended to show to what extent
119 it had been addressed by abbreviated titles and other than strictly the full corporate name?

A. Yes, sir.

120 X Q. Your researches have not extended back of the year 1871, according to the dates of the exhibits as entered?

A. Well, I think so, sir.

121 X Q. In your direct examination you referred to negotiations pending at one time between Mr. Shepard, as representing the Rubber Clothing Company, and your own company for a consolidation. Are you able to state the precise date of that negotiation?

A. I could not, sir.

122 X Q. Are you able to state, of your own knowledge, by whom it was opened?

A. My impression is, Mr. Shepard.

123 X Q. My question didn't quite call for your impression, Mr. Vermeule. If that is the best answer you can give I will take it. Have you anything more than an impression?

A. Well, I will tell you why I had an impression, if you like. I derived that impression from Mr. Allerton.

124 X Q. That is the extent of your actual knowledge on the subject?

A. Mr. Shepard came to me; he came to me in person and corroborated it.

125 X Q. Can you give us any further specific information than you have already given as to who opened the negotiation looking to a consolidation?

A. No, sir.

126 X Q. Your connection with your company commenced in 1870?

A. Yes, sir.

127 X Q. Was the negotiation about which you have referred put on foot somewhere about that time?

A. Later.

128 X Q. A year later, would you say?

120 A. It was just previous to Mr. Shepard putting up his sign for his new company.

129 X Q. About how long before, would you say?

A. Five or six weeks.

130 X Q. The capital of your company was somewhat augmented by your connection with it, I believe?

A. No, I think not, sir; not immediately.

131 X Q. Are you able to describe with any particularity the paper to which you referred as having been handed back by you to Mr. Shepard?

A. Well, it was an ordinary paper that you would use for drawing up a proposition.

132 X Q. A piece of note paper?

A. I couldn't remember about that, sir.

133 X Q. Not very large?

A. Not very.

134 X Q. Mr. Vermeule, you have stated in your direct examination that the complainant company from time to time received enclosures of checks intended for your company, but which were returned to the senders. Are you able to give the instances in which that occurred, and to describe the remittances?

A. I think I can do something towards it, sir.

135 X Q. Do the best you can, sir.

A. I will say in that connection that we received a letter this morning that the plaintiff company had returned to Janesville, Wisconsin, after opening it.

136 X Q. Who was that letter from?

A. J. A. H. Bostwick & Sons, I think.

137 X Q. What did it contain?

A. The original letter came to us and we replied to it, and their answer was opened by Mr. Shepard's company.

138 X Q. How was the letter addressed?

A. I didn't see the original address, sir; it came to us this morning. It was in our printed envelope.

139 X Q. Did the letter contain an enclosure?

A. No, sir; it was a claim.

121 140 X Q. My precise question had reference, as you may remember, to letters containing remittances of checks.

A. I think we have some memoranda of that. I will ascertain.

141 X Q. Are you able without referring to such memoranda as you may have to give names and dates and the description of the checks?

A. I could not now, sir.

142 X Q. You have referred in a general way to the receipt and execution by the complainant company of orders for merchandise intended for your own company. Are you able from recollection to give the dates, facts, and circumstances connected with such transaction?

A. I could not give you the exact dates from memory.

143 X Q. You have referred in your direct examination to a particular case of Jackson & Woodin Manufacturing Company. What was the place of business of that company?

A. It was in Pennsylvania. I really cannot give you the town now.

144 X Q. Was the concern a customer of yours?

A. Yes, sir.

145 X Q. Was it also a customer of the complainant company?

A. I don't know about that, sir.

146 X Q. You have referred to the fact that the complainant company has on the top of its building a sign, more or less conspicuous, with the words "Broadway, corner Broome street."

A. I meant to say that portion of the building occupied by Mr. Shepard.

147 X Q. Does the sign represent an untruth?

A. No, sir.

148 X Q. You were interrogated in your direct examination as to the representation by the complainant company that it had factories at Naugatuck. Are you prepared to say that the Goodyear Rubber Company ever made that representation at all?

122 A. I am prepared to say that Mr. Shepard made it on his sign.

149 X Q. Do you mean Mr. Shepard individually, or as the representative of some corporation?

A. As the representative of his corporation. His name was there, and I suppose it was an individual act.

150 X Q. Will you be good enough to state as a representative of what corporation he made that representation?

A. He had on the same sheet "Goodyear Rubber Company," "The Rubber Clothing Company," and "Manufacturers' Factory at Naugatuck, and Factories at Middletown."

151 X Q. In point of fact, Mr. Shepard, as the representative of some corporation, did for some years have a factory at Naugatuck, Connecticut, did he not?

A. I think not. He may have had a building there, but never manufactured any goods, to my knowledge.

152 X Q. He was in possession for some years of a manufacturing

establishment in which manufacturing was not carried on. Is not that the fact?

A. I could not say about that. We had charge of that building and afterwards bought it.

153 X Q. You had charge of the building?

A. Yes, sir. Our watchman looked after it.

154 X Q. That building was nearly opposite the building occupied as a manufacturing establishment by your own company?

A. Yes, sir.

155 X Q. Across the way?

A. Yes, sir.

156 X Q. On the main street?

A. Well, it is the main street, I think, running in that direction.

157 X Q. One of the principal streets?

A. Yes, sir.

123 158 X Q. And, as far as you know, no member of your company had any negotiations with Mr. Shepard on the subject of the factory?

A. Yes; I think there were negotiations, but they did not result in anything. There was an appeal made to Mr. Ackerman when anything of importance came up—the one of whom we afterwards bought the property.

159 X Q. It was for some years under lease, but not run as a factory, was it not?

A. Yes. I don't know that it was under lease; it was under contract not to run for five years; that was my impression.

160 X Q. Do you know the amount of rental paid during the five years?

A. I do not.

161 X Q. The contract between your own corporation, the complainant company, and the Rubber Clothing Company is still in existence?

A. Yes, sir.

162 X Q. Acted upon?

A. Yes, sir.

163 X Q. And performed by all of you?

A. I think so.

164 X Q. Mr. Vermeule, on reflection perhaps you may remember that your deceased president, Mr. Allerton, was good enough to look after that Naugatuck factory for a time for Mr. Shepard, at Mr. Shepard's request. Do you remember anything about that?

A. That might have been a fact, but I don't remember.

165 X Q. You do remember, I think, Mr. Vermeule, yourself of having bought some machinery or something of that sort from Mr. Shepard, do you not?

A. We bought everything that was there from Mr. Ackerman. Afterwards we bought from the Union India Rubber Company a little roll for $50.

166 X Q. That was after the purchase of the factory?

124 A. That was purchased immediately after Mr. Allerton's death.

167 X Q. I believe the Rubber Clothing Company has been for some years and is now a considerable customer of yours, is it not?

A. Yes, sir.

168 X Q. I find a little statement here, embracing the period between 1870 and 1883, of purchases from you, involving an aggregate of over $240,000. I suppose there is really no reason to doubt its accuracy?

A. There is no reason to doubt it at all.

JOHN D. VERMEULE.

Sworn to before me.

H. S. HOYT, JR., *Sp. Ex.*

Adjourned to Tuesday, July 31st, at 11 o'clock.

NEW YORK, *July* 31*st*, 1883—11 a. m.

Adjourned to August 7th, at 11 a. m.

NEW YORK, *August 7th*, 1883—11 a. m.

Adjourned to August 8th, 11 a. m.

NEW YORK, *August* 8, 1883—at 11 a. m.

Met pursuant to adjournment.

Present: Charles Wyllys Betts, Esq., counsel for the defendants, and Wm. W. MacFarland, Esq., counsel for the complainants.

STEPHEN W. KELLOGG, a witness of lawful age produced on the part of the defendant and being first duly cautioned by me
125 and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says as follows:

1 Q. What is your name, age, residence, and occupation?

A. My name is Stephen W. Kellogg. I am 61 years of age; residence, Waterbury, New Haven county, Conn., and have been a practising lawyer in New Haven county since June, 1848; the first six years in Naugatuck, Connecticut, and since the fall of 1854 in Waterbury, Connecticut.

2 Q. Have you been connected with the defendants, The Goodyear's India Rubber Glove Manufacturing Company and The Goodyear's Rubber Manufacturing —; if so, for how long and in what capacity?

A. I have. I have been a stockholder in the Goodyear's India Rubber Glove Manufacturing Company for more than thirty years. I have been a director of the company continuously for over twenty-seven years. I was president of the company from January, 1856, to October, 1867, Mr. Allerton being vice-president. I was then (part) vice-president until 1871. I have also been counsel for the company.

3 Q. Please state, if you know, under what title or titles the defendant, The Goodyear's India Rubber Glove Manufacturing Company, has been popularly known and addressed during the period of your connection with it.

The complainant's counsel objects to the question on the ground that it is irrelevant and immaterial.

A. When I first became connected with the company it was generally known, I think, by its full name; they were manufacturing only gloves and articles of that kind under their license from Charles Goodyear, they then having the right to make no other articles. When the Goodyear patent expired, about the year —, the company gradually went into the manufacturing of other articles.

126 During the war, between 1861 and 1865, they engaged largely in the manufacture of rubber goods generally, such as army and hospital supplies. After they had engaged in the manufacture of rubber goods other than rubber gloves they began to be known popularly by an abbreviated name, viz., "Goodyear's I. R. G. Company," "Goodyear's I. R. M'f'g Company, "Goodyear's India Rubber Manufacturing Company," "Goodyear's Rubber Manufacturing Company" and "Goodyear's Rubber Manufacturing Co.," "Goodyear's Manufacturing Company," "Goodyear's Rubber Company," "Goodyear's Company" and "Goodyear Company," and "Goodyear's Co." As early as the year 1867 these abbreviated names had become very common and we received a large number of letters and orders under these names. In 1871 and 1872 a very large part of our business was done under those names. We were known to the trade generally by some of those names as well as by our full name. I think, outside the trade, we were recognized by the abbreviated name in the city of New York, in our Government licenses, and other papers. From an examination of the correspondence and orders I do not find that any parties in the trade in the city of New York recognized us distinctively as the Glove Company by the use of the word "glove," except the Rubber Clothing Company and companies with which Mr. F. M. Shepard was connected. Letters came to us from very many of the States addressed to us by one of the former abbreviated names.

Counsel for the complainant company objects to the testimony of the witness as to the contents of documents in print or writing not produced.

4 Q. Can you produce some of the letters, referred to in your last answer, showing titles under which your company was known?

Counsel for the complainant repeats the objection that the question is immaterial and irrelevant.

127 A. I have quite a number of letters and orders received in 1867 under the abbreviated names I have mentioned, which I will produce hereafter. I have also letters and orders here received under those abbreviated names in the years 1871 and 1872. All these are in addition to those produced by Mr. J. D. Vermeule. They were selected by Mr. Allerton and myself from the files in the store in New York soon after the bringing of this suit—about one year ago. They were taken to Naugatuck by Mr. Allerton and found by me among his papers after his death, in December last, and they have been in my possession ever since. I have here and

produce, in addition to those produced by Mr. Vermeule, five packages, and they are as follows: In the eighteenth package are fifty-one papers received in 1871, addressed "Goodyear Rubber Co.," and eighteen papers with the same address received in 1872. In the nineteenth package are seventeen letters and papers received in 1871, addressed "Goodyear's India Rubber M'f'g Co." In the twentieth package are twenty-eight letters and orders received in 1871, and eight received in 1872, addressed "Goodyear's India Rubber Co." In the twenty-first package are sixteen letters and orders received in 1871, and seven received in 1872, addressed "Goodyear's M'f'g Co.," and in the twenty-second package are seven papers received in 1871, addressed "Goodyear's Rubber M'f'g Co."

5 Q. Prior to the organization of the "Goodyear Rubber Company," the complainant, under that name, was there any discussion in regard to the change of the name of the "Goodyear's India Rubber Glove Manufacturing Company; if so, when and what was it?

Counsel for the complainant objects to this question on the ground that it is irrelevant and immaterial.

128 A. There was a discussion among the directors of the company at several different times as to changing the name for a shorter name, and also for leaving out the word "glove." It was considered and discussed when the capital stock was increased, between 1865 and 1870, and also after Mr. Vermeule came into the company, in 1870, or the year after he came in. The idea was to make a shorter name and to use one of the abbreviated names I have mentioned. It was finally decided on each of these occasions to continue the word "glove" in the name, for two reasons. Among others, the company had been in existence so long with the word "glove" in the name, and we had some trade marks that we considered valuable, which involved the figure or the word "glove."

6 Q. After the organization of the complainant company was there a discussion and advice of counsel taken in regard to prosecuting them for the use of the name "Goodyear Rubber Company?" If so, please state the circumstances and the result.

Same objection.

A. There were several discussions and consultations on that subject. I do not think at any regular directors' meeting the matter was brought up when I was present, but there were informal discussions among the directors in 1873 and 1874, and later, and I was consulted by the president of the company, as counsel, and asked for my opinion. I gave him my opinion verbally, at different times, that an injunction would lie against the complainant. The reasons why a suit was not brought, were, as I remember, that Mr. Vermeule was opposed to a lawsuit; that the Rubber Clothing Company was a valuable customer of our company, especially in the matter of dress shields, which we manufactured, and Mr. Allerton, as he claimed, and Mr. Shepard were about as good personal friends as rivals in the same kind of business can be.

129 7 Q. It has been stated that the bills of the complainant and their other advertisements contain the words "Factories at Naugatuck, Ct." Can you state whether the complainant ever had a factory there?

A. I think I have known all about the rubber factories at Naugatuck for the last thirty years. The complainant never had a factory at Naugatuck to my knowledge. I am sure they never manufactured any goods there. The goods manufactured in Naugatuck, which complainant has dealt in, I think were all made by the defendant. There was a lease of a rubber factory called "The Star Rubber Factory," which is now owned by the defendant, for some time for the benefit of several rubber companies, for which I think rent was paid upon condition that the factory should be kept idle as to the manufacture of certain goods for the benefit of the companies paying the rent. The factory was kept idle until the lease expired and until it was purchased by the defendant.

8 Q. Do you know anything about the circumstances under which the defendant, "The Goodyear's India Rubber Glove Manufacturing Company," entered into an agreement regarding dress shields with the complainant, "The Goodyear Rubber Company," and "The Rubber Clothing Company?" If so, please state.

A. I was consulted by the president of our company, Mr. Allerton, upon the matter of those contracts before they were executed. Mr. Allerton objected strongly against signing a contract with the name "Goodyear Rubber Company" in it, as representing the other party. The contract we considered a valuable one to us, as well as the other party, and rather than lose the contract Mr. Allerton and Mr. Vermeule decided it was best to sign it.

Counsel for the complainant objects to the answer upon the ground that it is immaterial and irrelevant, and on the ground that
130 the matters referred to were not communicated to or brought to the notice of the complainant.

9 Q. Was there any intention on the part of the defendant in signing that contract or agreement to recognize Mr. Shepard's company under its title of "Goodyear Rubber Company?"

Counsel for the complainant objects to the question on the ground of its immateriality and irrelevancy.

A. There was none. We considered "The Rubber Clothing Company" and "The Goodyear Rubber Company" one and the same thing in our discussions of the subject.

10 Q. Do you know anything about the issuing of printed notices by the defendant in regard to the title under which they were to be addressed? If so, please state under what circumstances such notices were issued and when.

A. I knew nothing about those notices, except as I learnt them afterwards.

11 Q. Do you know anything about the issuing of circulars or letters by the postmaster of New York city regarding the confusion

arising between the names of the defendant and complainant companies? If so, please state the circumstances.

A. After the Goodyear Rubber Company's sign was put up at their Goodyear Rubber Company's stores, in 1873, and some considerable time after they began to do business as the Goodyear Rubber Company, we began to have trouble and confusion in regard to our correspondence. We had never had any before. This confusion increased so much, letters going to the Goodyear Rubber Company that were intended for us, that I came to New York upon the request of Mr. Allerton, the president, and went with him to see Postmaster James about it. He made an order to remedy the difficulty as far as he possibly could at the post office. It did relieve
131 the trouble to some extent, but the confusion afterwards continued and increased so much that I went to Postmaster Pearson to procure an order for the same purpose. All we asked was extreme care in giving to the complainant what belonged to their company and giving to the defendant what belonged to theirs. I believe Mr. Pearson made an order to that effect, or said he would.

The letters and papers referred to by the witness in his answer to the fourth question are offered in evidence by defendants' counsel in the packages, as stated by witness, and are marked Defendants' Exhibits Packages 18, 19, 20, 21, and 22.

Adjourned to Friday, August 31, 1883, at 11 a. m.

NEW YORK, *August* 31, 1883—11 a. m.

Adjourned to September 4, 1883, 11 a. m.

NEW YORK, *September* 4, 1883—11 a. m.

Adjourned to September 6, 1883, 11 a. m.

NEW YORK, *September 6th*, 1883.

Present: Counsel—W. W. MacFarland, for complainant; C. W. Betts, for defendants.

STEPHEN W. KELLOGG resumes:

12 Q. Have you made an examination of the letters received by the defendant company from 1865 to 1870, in order to dis-
132 cover under what titles the said company has been addressed by its correspondents during those years? If so, please state what you have found.

A. I have done so. In addition to the letters presented by Mr. Vermeule in his testimony and those presented by myself in my former examination I have a package of letters addressed to the defendant by the name of Goodyear Rubber Company and Goodyear Rubber Co., mostly between 1865 and 1870. There are 424 papers in package No. 23, chiefly letters and orders so addressed; 139 of them are in 1867 and 87 of them in 1866.

The 424 papers referred to by the witness are offered in evidence by the defendants' counsel, and is marked Defendants' Package No. 23.

Complainant's counsel objects to their being received in evidence on the ground that they are irrelevant and immaterial.

(Witness resumes:) I have in package No. 24 three hundred and thirty-five papers, mostly letters and orders, addressed to the defendant by the name of Goodyear India Rubber Co. and Goodyear I. R. Co. during the same years, mostly between 1865 and 1870. I have in package No. 25 two hundred and twenty-four papers, mostly letters and orders, addressed Goodyear's India Rubber M'f'g Company and Goodyear's I. R. M'f'g Company. I have in package No. 26 one hundred and twenty-seven like papers, received during the years as before, addressed Goodyear M'f'g Co. I have in package No. 27 forty-seven like papers, received during the same years as before by the defendant, addressed Goodyear's Rubber M'f'g Co. I have here in package No. 28 one hundred and seventy-six like papers, received by the defendant during the same years, addressed Goodyear & Company and Goodyear & Co. I find more letters and orders addressed to the defendant in 1866 and 1867 by the name of
133 Goodyear Rubber Company than any other one of the said abbreviated titles.

The letters referred to by the witness are offered in evidence by defendants' counsel in the packages referred to by the witness, and marked respectively Defendants' Exhibits Package Nos. 24, 25, 26, 27, and 28.

Counsel for the plaintiff company renews and repeats his last objection.

13 Q. Can you produce a license to carry on the business or occupation of retail dealers in the city of New York, showing the title under which the company was known at the date of said license?

A. I have the license here for the year from September 1st, 1862, to September 1st, 1863, under the United States internal revenue law, signed by Sheridan Shook, collector of the thirty-second collection district of the State of New York. This license was granted to the defendant by the name of "The Goodyear Manufacturing Company."

License referred to by the witness is offered in evidence by defendants' counsel and marked "Defendants' Exhibit License."

14 Q. Please state whether prior to the year 1873 the defendant company was the only company having the word Goodyear as part of its name, and which was engaged in the business of making a general line of rubber goods?

A. I think the defendant company was the only company before the year 1873 engaged in the manufacture of a general line of rubber goods that had the words Goodyear, rubber, and company combined in its name. There was a company at Naugatuck called Goodyear's Metallic Rubber Shoe Company, but their manufacture was limited to boots and shoes. Any other company except
134 the defendant company having the words Goodyear, rubber, and company in their name and engaged in manufacturing

was confined to a particular line or class of goods, I think, and not engaged in the manufacture of a general line of rubber goods.

15 Q. Please state whether about the year 1882 there was proposed a change of name of the Goodyear's India Rubber Glove Manufacturing Company to the Legislature of the State of Connecticut; and, if so, what occurred.

A. The only change proposed to the Legislature was in the winter of 1882. A resolution was referred to the committee of incorporations, not for changing the name but proposing that the defendant company should be known and called and might sue and be sued by the name of the Goodyear Rubber Manufacturing Company, as well as by the name of the Goodyear's India Rubber Glove Manufacturing Company.

Counsel for the complainant objects to the testimony of the witness as to the contents and terms of the resolution.

The witness resumes: Mr. F. M. Shephard and his counsel appeared in opposition, representing the Goodyear Rubber Company, which they claimed was a joint-stock company organized under the laws of the State of Connecticut. It was found they had no standing before the committee, as their charter had been repealed and their corporate privileges annulled by the act of March 25th, 1880, and no application had been made to revive the company before the supreme court within six months after the passage of said act. They afterwards made a new organization. The committee on incorporations of the Legislature offered to change the name of the defendant company to the "Goodyear Rubber Manufacturing Company," but objected to giving two names to the same company. The resolution was then withdrawn, as the defendant company did not wish to give up their old name.

135 Defendants' counsel offers to produce a copy of the resolution referred to by the witness.

Cross-examination by Mr. MacFarland:

16 X Q. During the whole period of your connection with the defendant company you were a lawyer in full practice in Connecticut, with the exception of the time you spent in Congress?

A. I was; with a fair practice.

17 X Q. Did you have active charge of any department of the company's business?

A. I had nothing to do with the manufacturing.

18 X Q. Did you have anything to do with the sales?

A. I did not.

19 X Q. Did you have anything to do with the business correspondence?

A. I did not, except when consulted occasionally by Mr. Allerton.

20 X Q. During the period you refer to was Mr. Allerton the chief executive officer of the company?

A. While Mr. Allerton lived in New York he was the chief executive officer of the company. He had a superintendent, Mr. B. M.

Hotchkess, at Naugatuck. Mr. Allerton moved to Naugatuck soon after 1870, I think; I am not positive as to the year without inquiry. His brother, R. G. Allerton, was treasurer in New York, and after Mr. J. G. Vermeule came into the company he became the vice-president and after Mr. R. G. Allerton's death the treasurer, and was the managing man of the business in New York. Mr. Geo. M. Allerton continued to be the president until his death, in December, 1882.

21 X Q. In your direct examination I think you stated that in the years 1871–'2 a large part of the business of the defendant company was done under one of the abbreviated names mentioned by you. Will you be good enough to state the source of your knowledge on that subject?

136 A. My source of knowledge is a personal examination of the letter books, order books, letters, and orders of the defendant company received during that period. My examination was made since then.

22 X Q. Did you make that examination with special reference to ascertaining that fact?

A. I made the examination in company with Mr. Allerton for the purpose of seeing by what names the defendant company was known during the period referred to.

23 X Q. Are you able to state the percentage of business conducted under the corporate name of the company as compared with that transacted under the aggregatively abbreviated names you have given?

A. I am not. We have tried for several years to keep the correspondence in the full name of the Goodyear India Rubber Glove Manufacturing Company or the Goodyear Rubber Manufacturing Company by sending envelopes with those names printed on the back inclosed in our letters generally.

Counsel objects to all that part of the answer *of* the words "I am not" as not responsive to the question.

24 X Q. How do you know the facts stated in the latter part of your answer?

A. From my own observation to a great extent.

25 X Q. Observation of what, may I ask; your personal observation of the correspondence as it occurred?

A. I have a great many letters in the course of the year myself from the defendant company and such an envelope is uniformly enclosed. When I have been at the store on different occasions I have noticed such was the custom of the company. I have been there but a small portion of the year, of course.

26 X Q. Were your visits to the store, as a rule, with special
137 reference to the business of the company or casual calls when you happened to be in the city?

A. I always go there when in the city, if I have time; frequently on business, but go there when I have no business, if I have time for it.

27 X Q. Can you say how many times a year, on an average?

A. I could not.

28 X Q. Are you able to state by whose procurement the license which you produce was obtained in the name of the Goodyear Manufacturing Company?

A. I am not. The only knowledge I have is I found it among the papers of the defendant company.

29 X Q. Referring to the packages of papers which you have produced, are you able to state what proportion those packages bear in the aggregate to the whole correspondence of the company during the periods covered by those papers?

A. I am not.

30 X Q. Are you able to state the proportion which any one of those packages bear to the whole correspondence?

A. I made an examination with Mr. Allerton, soon after the bringing of this suit, and found a very large proportion had some abbreviated name during the period I have referred to in my testimony, but what proportion each or the whole of such papers bore to the whole correspondence we never estimated.

31 X Q. Is the answer which you have made as definite an answer to the question as you wish to make?

A. It states the fact, as far as my examination is concerned.

32 X Q. Does the result of that examination enable you to state the proportion any one of those packages bear to the entire correspondence during the period covered by the papers in it?

138 A. It does not, for we did not take out nearly all the papers which were so abbreviated. All that Mr. Vermeule has produced has been taken out since then.

33 X Q. Do you state the last fact of your own knowledge?

A. I do; in this way, that the papers Mr. Allerton took out were all taken to Naugatuck, and what Mr. Vermeule produced were separate from these papers.

34 X Q. Which were taken out first and which last? I suppose you don't know from your personal knowledge?

A. I have no personal knowledge of the time when the papers produced by Mr. Vermeule were taken out, except that they were taken out since Mr. Allerton's death.

35 X Q. How do you know that latter fact?

A. Only by inquiry at the store before they were taken out.

36 X Q. Did you personally assist in searching for the papers contained in the packages which you have produced?

A. I did, but was only present part of the time.

37 X Q. Part of them, then, were found in your absence?

A. They were, but selected by Mr. Allerton by my direction and forwarded to Naugatuck.

38 X Q. You directed the principle, then, upon which the search should be made?

A. The only principle was to see how our name had been abbreviated prior to 1873 in our business.

39 X Q. Did your directions embrace all sorts of abbreviations or only certain abbreviations?

A. I think we looked for all sorts of abbreviations.

40 X Q. Are you able to produce specimens of the letter-heads and, bill-heads which were employed by the defendant company during the period covered by the papers which you have produced?

A. I will produce them.

41 X Q. Do you mean to be understood that prior to 1871
139 and '72 these were individuals, copartnerships, and corporations engaged in miscellaneous dealing in India-rubber goods that employed the words "Goodyear," and "Rubber," and "Company" in combination?

A. I did not speak of dealers only. I spoke of companies engaged in manufacturing and selling a general line of rubber goods. The word "Goodyear" was used by a great many dealers in different cities who were selling rubber goods, but not manufacturing.

42 X Q. Your answer was, then, intended to be limited to corporations both making and selling a general line of rubber goods?

A. It was.

43 X Q. Have you intended to be understood as saying in your direct examination that your company was not known to the trade in New York as a glove company?

A. I did not say that, I think; but they were better known as "The Goodyear Rubber Manufacturing Company" or the "Goodyear Rubber Company" for ten years prior to 1873 or after they engaged in the manufacture of a general line of rubber goods.

44 X Q. Will you state how you know that fact?

A. Only from an examination of the correspondence. Mr. Shephard and the houses he was connected with frequently addressed them as the Glove Company only.

45 X Q. Are you able to state the name of any customer of your company in New York or of any individual, firm, or corporation with whom your company has had dealings that has not at some time addressed your company as the "Glove Company?"

A. I can give the names of leading firms in New York that have usually addressed us as Goodyear Rubber Company and Goodyear Rubber Manufacturing Company.

46 X Q. And by other abbreviation, have they not?

140 A. Yes; by other abbreviations—"I. R. Company" and "I. R. G. Company;" the abbreviations where "glove" is left out are much more numerous.

47 X Q. If I understand you, the application to the Connecticut Legislature was not for a change of name, but for an additional name?

A. It was.

48 X Q. Was that resolution to which you have referred preceded by a petition?

A. It was not; according to my recollection, a simple resolution was prepared by me and referred.

49 X Q. You appeared as the advocate in support of the resolution?

A. I did.

50 X Q. To what committee was the resolution referred?

A. Committee on incorporations.

51 X Q. Who opposed the resolution before the committee on behalf of the plaintiff company?

A. Mr. Shephard and his counsel, Mr. Samuel L. Warner.

52 X Q. The resolution was finally reported adversely?

A. I am not sure, but I think not. I think it was withdrawn.

53 X Q. You say that the committee offered to report in favor of your changing your name to the "Goodyear Rubber Manufacturing Company?"

A. The chairman told me, as I recollect it, that there would be no objection to that on the part of the committee.

54 X Q. Who was the chairman?

A. I can't say positively now. I think there were two chairmen during that session. I will refresh my memory and let you know.

55 X Q. Was it told you during a session of the committee?

A. I am not sure about that, but it was in the committee room.

56 X Q. Do you remember whether any one on behalf of the plaintiff company was present at the time?

141 A. I don't think there was.

57 X Q. On what grounds did the plaintiff company base its objections to your resolution?

A. The plaintiff claimed that they were the Goodyear Rubber Company under the laws of Connecticut.

58 X Q. And that was their only claim?

A. I can't say that that was their only claim.

Adjourned to Monday, September 17, 1883, at one p. m.

NEW YORK, *September* 17, 1883.

Adjourned to Monday, October 1.

NEW YORK, *October* 1, 1883.

Adjourned to Monday, October 12, 1883.

NEW YORK, *October* 12, 1883.

Adjourned to Wednesday, October 31, 1883, 11 a. m.

NEW YORK, *October* 31*st*.

Present: W. W. MacFarland, Esq., counsel for complainant; C. Wyllys Betts, Esq., counsel for defendants.

Cross-examination of STEPHEN W. KELLOGG continued:

59 X Q. I hand you a postal card mailed October 23d of the present year, addressed to the New York Oil Cabinet Company, and signed Goodyear Rubber Company, by R. S. Schofield. Do you know who Mr. Schofield is?

142 A. I do not. I don't know that I ever saw the man, but I may know him; I do not recall the name now.

60 X Q. You do not recognize him as a person in the employ of the defendant?

A. I do not know all the employees by name.

Postal card referred to is marked for identification Complainant's Exhibit Postal Card, October 31, 1883.

Cross-examination closed.

S. W. KELLOGG.

Sworn to before me—

H. S. HOYT, JR., *Sp. Ex.*

CLINTON VAN VLIET, a witness of lawful age, produced on this examination on the part of the defendants, being first duly cautioned by me and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says as follows:

1 Q. What is your name, age, residence, and occupation?

A. My name is Clinton Van Vleet; age, 39 years; residence, Plainfield, N. J.; cashier for the Goodyear Rubber Manufacturing Company.

2 Q. How long has that been your occupation?

A. For about seven years; previous to that book-keeper for the same company; since its organization and before that with the Goodyear India Rubber Glove Manufacturing Company.

3 Q. What was the business of the Goodyear Rubber Manufacturing Company during your connection with it, and where was it carried on?

A. Manufacturing gossamer garments at 108 to 114 Worster street, New York. The cloth or gingham was sent to Naugatuck and coated and returned to New York city. The garments were there cut out and made and finished complete; these gossamer garments, ladies' and gentlemen's overcoats, hats, leggings, &c.

143 4 Q. During what years did you act as book-keeper for the Goodyear's India Rubber Glove Manufacturing Company and the Goodyear Rubber Manufacturing Company?

A. From November 1st, 1872, for about four years.

5 Q. During that time and during your connection with said company as cashier, what knowledge did you have of the manner in which the said companies were addressed by letter and of the name or names under which checks were drawn to their order?

Counsel for complainant objects to the question as irrelevant and immaterial.

A. From November 1st, 1872, quite a large percentage of the letters and checks were addressed Goodyear Rubber Company, Goodyear Company, Goodyear & Company, Goodyear's, in addition to their regular title.

6 Q. Did this occur as well before as after the incorporation of the Goodyear Rubber Manufacturing Company?

A. Yes, sir.

7 Q. Do you know whether any of the letters, checks, or orders addressed or drawn to the defendant company, under any of the titles detailed by you, were received by any other person or corporation? If so, state who it was and what was done with such letters, checks, and orders, and when such things occurred.

A. Since November 1st, 1872, there have been a number of our orders and letters, with checks, delivered to the Rubber Clothing Company, and checks returned oftentimes to the sender, and the orders, in many cases, filled by them.

8 Q. When did such things occur—since 1872?

A. Since they adopted the name of Goodyear Rubber Company.

9 Q. Has that occurred every year since then?

A. I think it has.

144 10 Q. Have you any evidence to show that the Rubber Clothing Company has received and filled orders intended for the defendant company? If so, please produce it.

A. Yes, sir; here are two letters of A. E. Lucas, dated September 15th and September 31st, 1883, showing that an order intended for us was filled by the Rubber Clothing Company. This was for rubber boots.

Two letters of Walde, Diehl & Co., dated October 26th and 27th, 1883, showing that an order intended for us was filled by the Rubber Clothing Company. This was for two dozen No. 2 rubber spittoons and two No. 5 mats.

Letter containing order of C. T. Bodifield & Company in reply to a letter of ours of November 1st, 1882. This order was for rubber carpeting.

Here is a letter of John Gauche's Sons, August 3d, 1883, stating that the last order intended for us was filled by the Goodyear Rubber Company.

D. J. Cushman letter, dated August 3, 1883; an order intended for us, he there states, was filled by the Rubber Clothing Company.

11 Q. Does these instances of the filling of orders by the complainant company intended for the defendant company during the year last past fairly represent the amount of orders that have been in like manner filled by them during each of the preceding years since 1872?

The question is objected to as immaterial and irrelevant, as not calling for facts, and as incompetent to prove the facts sought to be established.

A. These orders for 1883 are a fair percentage for the preceding years.

12 Q. Do you know that of your own knowledge?

A. Yes, sir.

13 Q. How does it happen that you produce documentary evidence of orders filled only during the past year?

145 A. We have only produced a portion of this year. We have only commenced for a short time to save the letters in which the parties have notified us that their orders were filled by the Rubber Clothing Company.

14 Q. Can you produce evidence that checks intended for the defendant company were received by the complainant company?

A. I can.

Letter of M. Kreisle & Company, $63.80, October 4th, 1883, were

sent back by the Goodyear Rubber Company to Austin, Texas, to Kreisle & Co.

Letter of Bryan & Cheeck, October 17th, 1883, contained a check for $128.04, returned to Glasgow, Kentucky.

Letter of Goldthwaite's Sons, May 7, 1883, containing check for $166.96, returned to Marion, Indiana.

Letter of George A. Eddy, July 19, 1883, containing draft for $70.83, returned to Leavenworth, Kansas.

Letter of Fite, Porter & Co., September 7, 1883, containing draft for $56.85, returned to Nashville, Tennessee.

Letter of the National State Bank of Burlington, Iowa, containing a draft for $12.81, dated February 26, 1883, opened by Rubber Clothing Company and returned to us.

Draft from S. Shirmyer & Co. for $148.73, dated February 15th, 1883, returned to Cincinnati.

Letter from Berry, Demoville & Co., containing check or draft for $110.14, dated October 9th, 1882, returned to Nashville, Tennessee.

Letter from Story & Roberts, containing check for $98.63, received by the Goodyear Rubber Company on November 4th, 1882, as appears by the stamp on the letter, was returned to Mexico, Texas.

Letter of William Litterer & Co., December 11th, 1882, draft for $22.80, returned to Nashville, Tennessee.

146 Letter of Arthur Peter & Co., July 30, 1883, containing check for $34.15, returned to Louisville, Kentucky.

Here is a letter from Berry, Demoville & Co., October 15, 1883, received by Rubber Clothing Company and returned to us by them.

Letter from H. E. Wilkens, Springfield, Massachusetts, received by Goodyear Rubber Company and Rubber Clothing Company, as per postal card, dated September 4th, 1883.

Letter of The Great Western Dispatch, dated September 14, 1883, received by Goodyear Rubber Company and returned to the office of The Great Western Dispatch Company.

Letter from P. L. Williams & Son, received by Goodyear Rubber Company and answered by them.

Letter of Thomsen & Muth, dated September 12, 1883, received by Goodyear Rubber Company and returned to us.

Letter from Henry W. King & Company, February 27, 1883, received by Goodyear Rubber Clothing Company and delivered to us.

Letter of Keingood, Rosenthal & Doyle, received by Goodyear's Rubber Company and returned to us.

Letter from Salisbury & Klein, addressed us, opened by Goodyear Rubber Company and returned to us.

15 Q. Can you state, of your own knowledge, whether the instances in which the complainant company has received checks intended for the defendant company and returned them to the correspondents have been as numerous during each of the years since 1872 as they were during the year 1883?

A. I think they were.

Defendant's counsel offers for identification the letters referred to in the 10th and 14th answers, and the same are marked Defendants'

Exhibits Orders Filed by Rubber Clothing Company, Nos. 1 to 6, and Defendants' Exhibits Checks Received by Rubber Clothing Company, Nos. 1 to 11, and Defendants' Exhibit Letters Opened by Rubber Clothing Company, Nos. 1 to 8.

147 Cross-examination by Mr. MACFARLAND:

16 X Q. Have you any other employment than that of cashier in the Goodyear Rubber Manufacturing Company?

A. Cashier for Goodyear's Rubber Manufacturing Company and for Goodyear's India Rubber Glove Manufacturing Company.

17 X Q. What is the nature of your employment in the latter company?

A. As cashier.

18 X Q. Does the former company keep a set of books distinctly its own independent from the latter?

A. Not in New York city.

19 X Q. What business has the so-called Goodyear Rubber Manufacturing Company outside of New York city?

A. Manufacturing goods at Naugatuck, Connecticut, I think.

20 X Q. Does it manufacture goods there as a corporation distinctly from and independent of the glove company?

A. I don't think it does.

21 X Q. In fact, I suppose, the business and effects are common to the glove company?

A. They are common to both companies; I can't say that there has been no separation.

22 X Q. If there be any difference between them can you say in what it consists?

A. No; I cannot.

23 X Q. The gossamer clothing which you say is manufactured by the Goodyear Manufacturing Company passes, I suppose, when manufactured, into the stock of merchandise of the glove company?

A. Yes; into the stock of merchandise of both companies.

24 X Q. I think you have stated that you do not know of any separate rights or interests peculiar to the one company as distinct from the other?

A. There are none, to my knowledge.

25 X Q. At what places are your duties performed?

148 A. At 503 and 505 Broadway, at the main establishment.

26 X Q. Have you special charge of the correspondence of the house?

A. I have charge of the part referring to the cash and a general knowledge of the other.

27 X Q. Do you know whether or not it is the habit of the company or companies to preserve files of their letters received?

A. It is.

28 X Q. And copies of the letters sent?

A. Yes, sir.

29 X Q. Is it the habit of the company or companies to destroy any class of its correspondence?

A. No, sir.

30 X Q. What did you mean, then, by saying that the company has only recently commenced to preserve the letters relating to the filling of orders by the complainant?

A. I meant to say that they kept them separate from their general correspondence.

31 X Q. Then the letters that you have produced here are very seldom those that you have thought proper to separate from the general correspondence?

A. Yes, sir.

32 X Q. Have you any recollection of any specific order intended for your company, but filled by the complainant, other than those mentioned in the letters that you have produced?

A. I do not remember the names of the parties they belonged to.

33 X Q. Nor the times or circumstances nor the goods, I suppose?

A. No, sir.

34 X Q. Are what you said in regard to the orders equally true in regard to the checks received by the complainant, but intended for your company?

A. Yes, sir.

35 X Q. Letters marked Exhibits Nos. 1, 1*a*, and 2, relating to the filling of orders by the company, but intended for your
149 company, are addressed to the Goodyear Rubber Company on its face, are they not?

A. Yes, sir.

36 X Q. The exhibit marked 3 on its face is addressed to the Goodyear Manufacturing Company, is it not?

A. Yes, sir.

37 X Q. Do you know how the envelope containing it was addressed?

A. I do not.

38 X Q. Do you know how the envelopes or letters referred to in Exhibit 4 were addressed?

A. I do not.

39 X Q. Is your answer the same in regard to the exhibits referred to, Nos. 5 and 6?

A. It is the same.

40 X Q. I now call your attention to the package of exhibits marked from Nos. 1 to 11, introduced by you this morning and relating to remittances. Look at Exhibits 7, 2, 6, 1, 8, 9, and 10, and state whether the letters of which they consist are not addressed on the face of them to the Goodyear Rubber Company.

A. Yes, sir; they are.

41 X Q. Do you know how the envelopes containing the other exhibits were addressed?

A. No, sir; I do not.

42 X Q. I now call your attention to the other class of exhibits introduced by you, consisting of letters received and opened, as you say, by the complainant, but in fact intended for your company; Exhibit No. 2 consists of an envelope with its enclosure addressed to the Goodyear Rubber Company, does it not?

A. Yes, sir.

43 X Q. Exhibit No. 3, of letters addressed to the Goodyear Manufacturing Company, was returned to you, with a memorandum stating that they were addressed to the Goodyear Rubber Company, were they not?

A. Yes, sir.

150 44 X Q. Do you know how the letter referred to in the pencil memorandum No. 4 was addressed?

A. No, sir; I do not.

45 X Q. Does the same answer apply to Exhibits Nos. 6, 4, 5, and 7 of this class?

A. Yes, sir.

46 X Q. Exhibit No. 8 appears on its face to be addressed to the Goodyear Manufacturing Company, does it not?

A. Yes, sir.

47 X Q. I show you a postal card marked by the examiner for identification; who is R. S. Scofield?

A. He is a manufacturer of rubber garments in Wooster street.

Redirect examination by Mr. BETTS:

48 Re-D. Q. You stated on your cross-examination that you did not know how certain of the envelopes in which the letters were marked for identification came to the rubber company were addressed; please state what became of those envelopes.

A. They were not returned to us—kept by them.

49 Re-D. Q. Please to look at the bundle of letters marked Defendants' Exhibits Orders Filed by Rubber Clothing Company, and state how the letter and postal card numbered 3 and 6 are addressed.

A. No. 3 is addressed to the Goodyear Manufacturing Company and No. 6 is addressed to Goodyear's Manufacturing Company, 503 Broadway.

50 Re-D. Q. Is 503 and 505 Broadway the present address of the defendant's company?

A. Yes, sir.

51 Re-D. Q. Now please look at the bundle of letters marked "Checks," received by Rubber Clothing Company, and state how the letters Nos. 4, 5, and 10 are addressed.

A. No. 4 is addressed, Goodyear's Rubber Company; No. 5, Goodyear's Rubber Manufacturing Company, box 1424—that is the

151 box of the defendant's company; No. 10, the envelope is addressed to Goodyear's Manufacturing Company, 503 and 505 Broadway.

52 Re-D. Q. Now please look at the bundle of letters marked for identification Defendants' Exhibit Letters Opened by the Rubber Clothing Company, Nos. 1, 2, 3, 5, 5*a*, 6, and 7, and state how those were addressed.

A. No. 1, the statement is addressed upon its face Goodyear's Rubber Manufacturing Company; the envelope in which it came was addressed to Goodyear Rubber Company, 505 Broadway; No. 3, Goodyear's Rubber Manufacturing Company, 503 Broadway; No. 5, Goodyear's Rubber Manufacturing Company; 5*a*, Goodyear Rub-

ber Manufacturing Company; No. 6, Goodyear Rubber Manufacturing Company; No. 7, Goodyear Rubber Manufacturing Company.

Adjourned to 14th November, 1883, at 11 a. m.

CLINTON VAN VLIET.

NEW YORK, *November 14th*, '83—1.30 p. m.

Recross examination of Mr. VAN VLIET continued:

Present: Mr. MacFarland, counsel for complainants; Mr. Betts, counsel for defendants.

53 X Q. Referring to the postal card to which your attention was called in your last examination, the R. S. Scofield is in the employment of the defendant?

A. Yes.

54 X. Q. And the postal was sent in connection with its business?

A. Yes, sir.

55 X. Q. Have checks ever come to you, intended for the glove company, made payable to the order of the Goodyear Rubber Company?

A. I think so.

152 56 X. Q. In such cases have you endorsed the checks in the name of the Goodyear Rubber Company?

A. No, sir.

57 X. Q. Has any one else connected with the glove company done so?

A. Not that I know of.

58 X. Q. What did you do with the checks when they came so payable?

A. Deposited them in our bank.

59 X. Q. Without any endorsement?

A. Not without an endorsement.

68 X. Q. What kind of endorsement?

A. For deposit to the credit of Goodyear's I. R. Glove Manufacturing Company.

61 X. Q. Without endorsing the name of the payee at all?

A. Without any other endorsement.

Redirect:

62 Re-D. Q. What is the employment of R. S. Scofield, whose name is on the Exhibit Postal Card?

A. Cutter of rubber garments.

63 Re-D. Q. Has he anything to do with the correspondence of the company?

A. No, sir.

64 Re-D. Q. Has he any authority to sign letters or postal cards in the name of the company?

A. No, sir.

65 Re-D. Q. Look at the letter which I now show you and state if you know what it is.

A. Yes, sir; it is regarding some rubber staples that were returned to us and an order intended for us filled by the Goodyear Company.

66 Re-D. Q. Do you know when that letter was received by the defendant company?

A. September 27th, 1882.

67 Re-D. Q. Can you produce a bill-head used by the defendant company to illustrate the style of bill-head in use by them prior to the incorporation of the Goodyear's Rubber Manufacturing Company?

A. You have one there which illustrates it.

153 The bill produced by the witness, which is dated December 31st, 1874, is offered in evidence by defendants' counsel and marked Defendants' Exhibit Illustration of Bill-Head.

At request of complainant's counsel the following copy of said bill is made a part of the record:

Goodyear's India Rubber Glove M'f'g Co., manufacturers and dealers in rubber goods of every description.

68 Re-D. Q. In the bill-head just produced by you the word Goodyear's in very large capitals occupies a line by itself, does it not, as do also the words rubber goods, in a line by themselves, in very large capitals, the other lines being printed in much smaller letters?

A. Yes.

Defendants' counsel offers in evidence the letter referred to by the witness in answer to questions 65 and 66, and the same is marked Defendants' Exhibit Gittell Letter.

69 Re-D. Q. Can you state what the custom has been of the defendant company during all the time of your connection with them in regard to the sending of printed return envelopes in all their letters to their correspondents and in regard to the number of letters received by the company from their correspondents in such printed return envelopes?

Objected to by counsel for complainant on the ground that the facts called for are immaterial and irrelevant.

A. It has been the custom to enclose a printed envelope in each and every communication from the house, and about 75 per cent. of the letters received have been in these printed addressed envelopes.

154 70 Re-D. Q. Can you produce one of these envelopes and state how long it has been in use as above described?

A. I can produce one; I don't know just how long that particular kind has been in use; I should think four or five years, and similar addressed printed envelopes all the time I have been there.

The envelope produced by the witness offered in evidence by defendants' counsel and marked Defendants' Exhibit Recent Style of Return Envelope.

Counsel objects to that part of the answer referring to similar envelopes and insists that the envelope alleged to be similar should be produced as the best evidence.

71 Re-D. Q. Do you know whether a search at the store of the defendants has been made for any of the return envelopes showing the style in use prior to the one produced by you; and, if so, with what success?

A. I don't know of any search being made.

Defendants' counsel offer to prove that such search has been made by the defendants for return envelopes in use subsequently to 1872 and prior to the use of the envelope produced by the witness, and that such search has been unsuccessful, and in view of testimony to that effect, which will be introduced, the following question is put:

72 Re-D. Q. What do you mean in your answer to the 70th question by the statement that similar addressed printed envelopes have been in use all the time I have been there?

A. I mean by similar envelopes that they have been with different addresses or numbers on Broadway.

73 Re-D. Q. Can you describe them?

155 A. Some with 488, 490, and 492 Broadway, corner Broome street. I don't—I can't state accurately how the names were placed upon them.

74 Re-D. Q. Please state when the company added to their store on Fulton street the building known as 166 Fulton street?

A. March, 1872.

Recross:

75 Re-X. Q. Has the defendant a place of business at 205 Broadway?

A. It has.

76 Re-X. Q. How long has it had one there?

A. I don't know; ever since I have been with the company.

77 Re-X. Q. Has the P. O. box been 1424 ever since you have been with the company?

A. It has.

78 Re-X. Q. I hand you an envelope addressed as follows, in the upper left hand corner: "Factories, Naugatuck, Conn.," beneath, "Goodyear's India Rubber Glove Manufacturing Company, manufacturers and dealers in all kinds of rubber goods," and I ask you whether that envelope is at present used by the defendant company; and, if not, when it ceased to use it?

A. It is not in use at present and has not been since my connection with the company.

79 Re-X. Q. You are quite positive as to your last statement?

A. To the best of my knowledge and belief.

80 Re-X. Q. I hand you Defendant's Exhibit Bill-Head, bearing date December 31, 1874, and I ask you whether at that date defendants did not use envelopes corresponding to that bill-head?

A. I think they did.

81 Re-X. Q. Will you tell me the precise date at which the defendants commence to use envelopes like the Defendants' Exhibit Recent Style of Return Envelope, the exhibit being marked as of to-day?

A. I cannot.

156 82 Re-X. Q. Referring to the letter marked as an Exhibit Gillett Letter, October 25, 1882, it appears that the order filled by the complainant company was addressed to the Goodyear Rubber Company?

A. It does.

83 Re-X. Q. What personal knowledge have you as to Mr. Scofield's authority to write letters or postal cards?

A. I know that he has no authority to do it.

84 Re-X. Q. What is the source of your knowledge?

A. I know that no one at the factory in Wooster street has that authority.

85 Re-X. Q. How do you know it?

A. I know that he couldn't have the authority without my knowing it.

86 Re-X. Q. Is it any part of your duty to confer authority upon others to write letters for your company?

A. It is.

87 Re-X. Q. What is your commission in that respect and to whom does it extend.

A. I attend to most of the correspondence and have the authority to direct those in the employ of the company to write any letters.

88 Re-X. Q. Does your authority extend to forbidding any one to write letters without your especial authority?

A. Any one not an officer of the company in New York city.

89 Re-X. Q. Did you ever forbid Mr. Schofield to write any letters or postal cards relating to his own part of the business?

A. I did not.

90 Re-X. Q. Do you mean to say that it was improper on the part of Mr. Schofield to write the postal card in question?

A. Yes, sir; I would say that he had no authority to do it.

91 Re-X. Q. You mean, I suppose, no authority from yourself?

A. I don't think he had authority from any one.

157 Counsel asks that the last answer may be stricken out as not responsive or relevant.

92 Re-X Q. How do you know he had no authority from any one to write it?

A. I don't think he had authority from any one to write it.

Same motion to strike out.

93 Re-X Q. Is that all you know about it?

A. Yes, sir.

94 Re-X Q. Are you prepared to swear that Mr. Schofield is not in the habit of writing postal cards and letters relating to his own part of the business?

A. I am prepared to swear that he isn't in the habit, to my knowledge.

95 Re-X Q. I suppose that you do not know whether he does or not?

A. I haven't any knowledge of his doing it.

96 Re-X Q. Have you any knowledge of his not doing it?

A. I believe he is not in the habit of doing it.

97 Re-X Q. Who has the immediate supervision of Mr. Scofield's actions?

A. Mr. Vermeule, the president of the company.

98 Re-X Q. Your duties relate more particularly to the finances of the company, I suppose?

A. Yes, sir.

99 Re-X Q. Has your company a secretary?

A. Yes, sir.

100 Re-X Q. What is his name?

A. George M. Allerton.

101 Re-X Q. Has he anything to do with the correspondence?

A. Not in New York city.

102 Re-X Q. Are there different departments in your company and heads of departments?

A. Not in New York city.

158 103 Re-X Q. The president is the general executive in New York city, is he not?

A. Yes, sir.

CLINTON VAN VLIET.

Sworn to before me—

H. S. HOYT, JR., *Sp. Ex.*

STEPHEN W. KELLOGG, a witness called on behalf of the defendant, testifies as follows:

1 Q. Have you been previously examined in this case?

A. I have.

2 Q. Can you state the custom of the defendant Co. in regard to the custom of sending return envelopes in their letters and produce envelopes illustrating said custom?

Counsel for complainant Co. objects to question as calling for immaterial and irrelevant facts.

A. I testified in my former examination that such had been the custom, and was requested by Mr. McFarland to produce the return envelopes used formerly and in 1873.

Mr. MacFarland states, subject to correction, that he thinks the witness is in error in regard to the nature of his request.

I could not find any such return envelopes at the store in New York, and made search in the factory in Naugatuck. I found two return envelopes, which I produce here, such as were used prior to 1872. They were found among letters of 1868.

Defendants' counsel offers in evidence the two envelopes produced by the witness, marked "Defendants' Exhibits Return Envelopes of 1868, Nos. 1 and 2.

159 3 Q. Look at the printed slip and letter which I now hand you and state what they are and what they illustrate.

A. The printed slips used as long ago as 1867 by some of the customers of the glove Co. They are headed "Goodyear's Rubber M'f'g Co., 205 Broadway, New York." This was attached to a letter dated November 3, 1867, addressed Goodyear Rubber Co., and signed F. M. Hubbard. The printed slip also — signed F. M. Hubbard.

Objection by complainant's counsel on the ground of irrelevancy and immateriality.

4 Q. Please explain how these printed slips were used, and to what extent, and during what period.

A. I find them attached to letters among the correspondence of the company in 1867 or 1868 more especially in regard to rubber rings. They are attached to letters or correspondence giving orders for them.

5 Q. Were these printed slips received by the defendant company as orders from numerous different correspondents during 1867 and 1868?

A. I think there were a number of different ones; I can't say how many.

Defendants' counsel offers in evidence the said printed slip referred to by the witness and the letter attached and the same are marked Defendants' Exhibit Slip and Letter.

Cross-examination:

6 X Q. Who printed the printed slip attached to the letter to which you have referred?

A. I have no knowledge of them except as I find them attached to the correspondence.

7 X Q. Have you not reason to know that the glove company printed them?

160 A. I have no knowledge, but think they may have printed them and sent them out to their customers at the time.

8 X Q. Have you any serious doubt that they did so?

A. I don't know who else would have done it; but have no knowledge about it.

9 X Q. Do you not really think that the company did it?

A. I think they may have done it.

10 X Q. Referring to those printed notices, you use the expression them; does that imply that you found more than the one you produced?

A. It does; there were quite a number of them sent in a box to Mr. Betts.

11 X Q. How many of them?

A. I could not tell without looking up the papers.

12 X Q. Are you able to produce the others? If so, please produce them.

A. I will try to have them found in the office here.

13 X Q. Are they at present here in Mr. Betts' office?
A. They were last spring. I have not seen them since.
14 X Q. When did you find the one that you produced to-day?
A. That is one that I found amongst the papers of the company several months ago when searching for letters.
15 X Q. To what periods of time do the printed slips refer that you say are in Mr. Betts' office, but which you have not produced?
A. I think in 1867 or 1868.
16 X Q. Do they bear, at the top exactly the same name—Goodyear's Rubber Manufacturing Company?
A. They are all alike, as I recollect them.

Counsel for complainants calls for the production of the
161 printed slips referred to by the witness as in the possession of the defendants' counsel.

17 X Q. You have introduced in evidence the articles of association of Goodyear's India Rubber Glove Manufacturing Company, filed in the secretary of state's office March 20th, 1873, and the county clerk's office in the county of New York March 24th, 1873. What action, if any, was had under that certificate?
A. I don't think any action was ever had under that.

Defendants' counsel offers in evidence above-named articles of association and they are marked Defendants' Exhibits Articles of Incorporation, Goodyear's India Rubber Glove Manufacturing Company in New York.

Defendants' counsel offers in evidence articles of incorporation of Goodyear's Rubber Manufacturing Company, filed with secretary of state March 20th, 1873, and with the county clerk in the county of New York March 24th, 1873, and they are marked Defendants' Exhibit Articles of Incorporation, Goodyear Rubber Manufacturing Co. in New York.

18 X Q. The same persons made the last certificate introduced as those who made the first?
A. The same, I believe.
19 X Q. What action was taken in pursuance of the last certificate?
A. I don't know — action was taken.
20 X Q. The business and financial interests of the persons making those certificates were identical under each, I suppose?
A. I suppose they were.
21 X Q. And actually represented in the corporation already in existence of Goodyear's India Rubber Glove Manufacturing Company?
162 A. They were a part of the stockholders of the defendant company; but they did not embrace all of the stockholders of the defendant company?
22 X Q. The certificates were filed in the interests of the then existing corporation of the defendant company?
A. I suppose they were.

Defendants' counsel offers in evidence copy of articles of association of the Goodyears' Rubber Manufacturing Company; they are marked Defendants' Exhibit Articles of Association of Goodyear's Rubber Manufacturing Co. in Conn.

Defendants' counsel also offers in evidence a copy of the amendment to the original Connecticut articles of association of the Goodyear's India Rubber Glove Manufacturing Co., dated August 7, 1867, and the same are marked Defendants' Exhibit Amendment of Conn. Articles.

23 X Q. What was done, if anything, under the articles of association filed in Connecticut in 1882?

A. The company was regularly organized.

24 X Q. Made up of officers and stockholders of the glove Co.?

A. They were all stockholders of the glove company, but constituting a part only of the stockholders of that company.

25 X Q. Is there an identity of interest between the two organizations?

A. There is an identity so far. It was thought that the business might be divided, but it has not been done yet.

26 X Q. Was it any part of the object, in filing that certificate, to acquire or protect the name Goodyear Rubber Manufacturing Company for the benefit of the glove Co.

163 A. We claimed the right to use the name, and two of the four corporators in the New York Company of the same name had died or gone away, and we made a new organization partly on that account.

27 X Q. I must ask for a little more definite answer to the question.

A. Our object was to protect the name which we claimed the right to from many years' use.

28 X Q. Was it or was it not any part of the object to better secure to the glove Co. the right to use the name Goodyear's Rubber Manufacturing Co.?

A. I don't think that was the object, for we considered we already had the right.

29 X Q. Then, in your opinion, it was no part of the object?

A. I do not think it was.

STEPHEN W. KELLOGG.

Sworn to before me—

H. S. HOYT, Jr., *Sp. Ex.*

Adjourned to Nov. 15th, at 10 o'clock.

NEW YORK, *Nov. 15th*, 1883—10 a. m.

Present: C. W. Betts, Esq're, counsel for defendants, and MacFarland, Esqr., counsel for complainants.

LOUIS M. ALLERTON, a witness on behalf of the defendants, being duly sworn, deposes and says:

1 Q. What is your name, age, residence, and occupation?

A. My name is Louis M. Allerton; age, eighteen years nine

months; residence, Naugatuck, Conn.; occupation, in charge
164 of the clothing department of the Goodyear Rubber Manufacturing Co. and Goodyear's India Rubber Glove Manufacturing Co.

2 Q. Are you a son of Mr. George Allerton, who was formerly president of these companies?

A. Yes.

3 Q. Have you ever seen the store in St. Louis of the complainant company and examined the signs upon the same; if so, when?

A. Yes; I have seen the signs a number of times between January 6th and June 1st, 1882.

4 Q. Please look at the photograph which I now show you and state whether it correctly represents the signs upon the said store of the complainant company in St. Louis as they appeared between January 6th and June 1st, 1882.

A. Yes; it does.

The photograph which the witness refers to is the one formerly referred to in this case in the evidence for the complainants and which was marked for identification on the 15th day of March, 1883.

5 Q. Did the sign upon the St. Louis store at that time contain the statement found on the photograph that one of the factories of the complainant company was in Naugatuck, Conn.?

A. Yes.

6 Q. What can you say in regard to the truth or falsity of that statement?

A. That the Goodyear Rubber Company have had no factories in Naugatuck within my recollection, which dates back nine years. I mean by the Goodyear Rubber Company the plaintiff company.

7 Q. During those nine years of which you speak have you been a resident of Naugatuck?

A. Yes.

Cross-examination:

8 X Q. Where are your duties—in Naugatuck or New York?

A. Naugatuck.

165 9 X Q. Then they are connected with the factories in Naugatuck?

A. Yes.

10 X Q. How did you give the full name of the defendant company? Will you be good enough to repeat it?

A. Goodyear's Rubber Manufacturing Company and Goodyear's India Rubber Glove Manufacturing Company.

11 X Q. Does it conduct all its business under those two names now?

A. All its business that I have anything to do with or that I know anything about?

12 X Q. When did you last see the St. Louis store?

A. Some time in May, 1882.

L. M. ALLERTON.

Sworn to before me—

H. S. HOYT, JR., *Sp. Ex.*

Mr. ALFRED P. LEAYCRAFT, a witness on behalf of the defendant, being duly sworn, deposes and says:

1 Q. What is your name, age, residence, and occupation?

A. My name is Alfred P. Leaycraft; age, 31 years; residence, 106 East Fifty-sixth street, New York; occupation, cashier of the Goodyear's Rubber Manufacturing Company and Goodyear's India Rubber Glove Manufacturing Company, lower department, 205 Broadway.

2 Q. How long have you been cashier for the company at 205 Broadway?

A. I have been cashier ever since the stores have separated—about seven years ago.

3 Q. Previous to that time how were you occupied?

A. As cashier in the office of the company, at 162 and 164
166 Fulton street. I went with the concern September 21st, 1868, and have been with them up to the present time.

4 Q. How were you employed by the company when you first went there?

A. Office boy.

5 Q. At about what time did you become cashier?

A. About 1871.

6 Q. Did your duties as office boy and as cashier enable you to see the letters that were received by the company and the manner in which they were enclosed and addressed?

A. Yes.

7 Q. Do you know whether it was the custom of the company, during all the years that you have been with them, always to enclose, in the letters sent to their correspondents, printed return envelopes similar to those which I now hand you?

Defendants' counsel hands to the witness the Defendants' Exhibits Return Envelopes, 1868, Nos. 1 and 2, and the Exhibit Recent Style of Return Envelope.

Objected to by counsel for complainant as calling for immaterial and irrelevant facts.

A. It was.

8 Q. Can you state what proportion of the letters received by that company during all the time you were with them, before the separation of the stores, about seven years ago, were enclosed in such printed return envelopes?

Same objection.

A. About seventy-five per cent.

Cross-examination:

9 X Q. Who conducted the principal part of the correspondence of the business?

A. I should say the secretary—that is, out in the store. In the office, the treasurer.

167 10 X Q. In stating the percentage of letters enclosing return envelopes you refer, I suppose, to the correspondence which came under your personal observation?

A. It was the practice of the mail being brought in the office every morning and opened there by one of the officers of the company, consequently I saw about all the mail that came to the concern.

11 X Q. And it is from such observation that you make the statement as to percentage?

A. It is.

12 X Q. Are you able to state exactly the year that the defendant company commenced to use envelopes like the one marked Defendants' Exhibit Recent Style?

A. No, sir.

13 X Q. Are you able to state that the defendants have entirely ceased the use of envelopes like the one marked Return Envelope 1868, No. 1?

A. They have no use for the envelopes like that, as they have changed their address. They use similar envelopes, but with a different address.

14 X Q. Are you able to state exactly the year they ceased to use envelopes with the same address?

A. No, sir; I cannot state the exact year.

Redirect:

15 Re-D. Q. Does the defendant company now use any other printed return envelopes than those similar to the one marked Defendants' Recent Style of Return Envelopes?

A. Not to my knowledge.

A. P. LEAYCRAFT.

Sworn to before me—

H. S. HOYT, JR., *Sp. Ex.*

Adjourned until November 21st, at 11 o'clock a. m.

168 NEW YORK, *November* 21, 1883—11 o'clock a. m.

Adjourned to January 11th, 1884, at 11 a. m.

NEW YORK, *January* 11, 1884—11 a. m.

Met pursuant to adjournment.

Present: C. Wyllys Betts, counsel for defendants; W. W. MacFarland, counsel for complainant.

FREDERICK W. STEPHENSON, on behalf of the defendants, being duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says, in answer to the following interrogatories:

1. Q. What is your name, age, residence, and occupation?

A. Frederick W. Stephenson; twenty-two years; 130 West Thirty-fourth street; dealer in rubber goods at 224 Sixth avenue, New York.

2 Q. Were you ever employed by the defendant at Goodyear's India-rubber glove manufactory?

A. Yes.

3 Q. When?

A. From September, '77, to November, '83.

4 Q. Mr. John Vermeule, in his cross-examination, at cross-question 85, stated that you had informed him that the complainant company represented itself to be the same concern as the defendant company, and claimed that together you constituted one concern. Please state whether you gave Mr. Vermeule such information and relate the facts that you told him.

Counsel for the complainant objects to the question as irrelevant and incompetent.

169 A. Well, I told Mr. Vermeule of a case which occurred last fall, 1883, fall of 1883, with Mr. Price, of Harris & Price, Columbia & Mississippi. Mr. Price had bought his goods of me the year previous and went into the clothing company's house supposing that it was the Goodyear Rubber Manufacturing Company, where he was told that I was out, but that they would take his order and give it to me, I being in the house that sold the western trade, they taking charge of the southern trade. Mr. Price, not being quite satisfied with the story, came on up to the Goodyear Rubber Manufacturing Company's house, where he told that story and placed his order; that is the substance of it. Mr. Virden, of E. & S. Virden, Jackson, Mississippi, who had previously bought goods of the Goodyear Rubber Manufacturing Company, I met in the street one day, and, upon enquiring if he intended to buy any goods of me this fall, told me that he had already done so. Upon investigation I found he had bought of the Rubber Clothing Company, where he said they had represented to him that they were the house where he had previously bought his goods; that is the amount of what I told Mr. Vermuele.

F. W. STEPHENSON.

Sworn to before me—

H. S. HOYT, Jr., *Sp. Ex.*

Adjourned to two o'clock.

Met pursuant to adjournment, Jan. 11, at two o'clock p. m. Counsel present as before.

Mr. Robert S. Walker, a witness produced on behalf of the defendant, being duly cautioned and sworn to tell the truth,
170 the whole truth, and nothing but the truth, deposes and says as follows in answer to interrogatories:

1 Q. What is your name, age, residence, and occupation?

A. Robert S. Walker; 46 years of age; Flatbush, New York; publisher and broker.

2 Q. Were you ever connected with the defendant company; and, if so, when?

A. I was, as secretary, from 1862 to 1878.

3 Q. Please look at the letter from F. M. Hubbard, dated November 3d, 1867, and a printed slip attached thereto, signed by Hubbard, with the printed title "Goodyear's Rubber M'f'g Co.," which letter and slip are marked "Defendants' Exhibit Slip and Letter, Nov. 14, 1883, H. S. H., Jr., Ex'r," and state whether you know anything about the said letter and slip and about the similar slips attached to letters in the "Defendants' Exhibit Letters No. 15, June 15, 1883, H. S. H., Jr., Ex'r."

A. Well, while I was connected with the company we received such slips and such letters signed by F. M. Hubbard for rubber rings for a wagon seat which he had invented. On this letter I notice some figuring in my handwriting, which I identify, made at the time the letter was received. This Mr. Hubbard travelled in the West, selling rights to manufacture his patent seats, and was in the habit of giving the parties to whom he sold rights orders on us for rings in the form of these printed slips. It is difficult to say exactly how long this arrangement continued, but at least a year or more, during which time we received not less than fifty slips, I should say, perhaps a hundred. These slips we had nothing to do with the printing of, to the best of my recollection.

ROBERT S. WALKER.

Sworn to before me—

H. S. HOYT, JR., *Sp. Ex.*

Adjourned to January 24th, 1884, at eleven a. m.

171 NEW YORK, *January 24th*, 1884—11 a. m.

Met pursuant to adjournment.

Present: Mr. MacFarland, for complainant; Mr. C. Wyllys Betts, for defendants.

CLINTON VAN VLIET, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy herein, and being examined by Mr. Betts, counsel for defendants, deposes and says as follows:

1 Q. What is your name, age, residence, and occupation?

A. My name is Clinton Van Vliet; my age is thirty-nine years *old;* my residence is at Plainfield, New Jersey, and my occupation is cashier to the Goodyear Manufacturing Company.

2 Q. Have you heretofore testified in this case?

A. Yes, sir.

3 Q. Please state whether during the occupation of the store at the corner of Broadway and Broome street by the defendant company they were accustomed to place upon their stationery, such as letter-heads, bill-heads, cards, tags, circulars, price lists, &c., the words "Broadway, corner of Broome street," in prominent characters? And, if so, please produce specimens of such stationery used during that period.

A. They were. (Specimens produced by witness.)

Defendants' counsel offers in evidence specimen produced, and same is marked "Defendants' Exhibit Stationery, January 24, 1884, H. S. H., Jr., Ex'r."

4 Q. How long did the defendants occupy that store?

172 A. About five years—from about 1876 to 1881.

5 Q. And during all those years did they continue to use such stationery with the words "Broadway, corner of Broome street," prominently upon it, as shown in the exhibits?

A. They did.

Cross-examination waived.

CLINTON VAN VLIET.

Sworn to before me—

H. S. HOYT, Jr., *Sp. Ex'r.*

Defendants' counsel offers for identification additional specimens of stationery, which are marked "Defendants' Additional Specimens of Stationery, January 24, 1884, H. S. H., Jr., Ex'r."

Case closed for defendants.

**Defendant's Exhibit Bill Head, June 28, 1883.**

H. S. H., Jr., *Special Examiner.*

**RUBBER CLOTHING CO.**
Factories, Naugatuck, Conn.
TERMS, CASH—with Exchange on New York.

**UNION INDIA RUBBER CO.**
Factories, 4th Avenue, 131st & 132d Streets, New York.

**GOODYEAR RUBBER CO.**
Factories, Middletown, Conn.
Oil-Cloth Factories, Newark and Elizabeth, N. J.

365 & 367 BROADWAY, cor. Franklin Street.

*New York, Aug.* 23, 1878.

Goodyear I. R. Glove Co.,

OFFICES OF
**The Goodyear Rubber Co.**

365 & 367 Broadway, New York.
240 & 242 Main Street, Buffalo.
11 North Charles Street, Baltimore.
105 & 107 Madison Street, Chicago.
370 East Water Street, Milwaukee.
400 North 4th Street, St. Louis.
577 & 579 Market Street, San Francisco.

F. M. SHEPARD, President.
J. A. MINOTT Secretary.

*BOUGHT OF* **RUBBER CLOTHING CO.,**

*Manufacturers, Importers, and Wholesale Dealers,*

RUBBER GOODS OF EVERY DESCRIPTION,

**Boots, Shoes, and Arctics, Clothing, Belting, Packing, and Hose,**

Combs, Balls, Toys, Enameled Rubber Carriage Drill, and Oil Cloths.

OIL TABLE COVERS, WOODS, GAS-TIGHT TUBING, ETC., ETC.

1–6 doz. 1 strap Ankle boots, 8.75 ---------- 1.46
15 & 5% ---- 27

J. 317

les, } Forwarded by

1.19

C. H.

**Defendant's Exhibit Order Sheet, June 28, '83.**

H. S. H., Jr., *Special Examiner.*



Offices of THE GOODYEAR RUBBER CO.
365 & 367 Broadway, NEW YORK. 105 & 107 Madison St., CHICAGO.
240 & 242 Main St., BUFFALO. 370 East Water St., MILWAUKEE.
11 N'th Charles St., BALTIMORE. 400 North Fourth St., ST. LOUIS.
577 & 579 Market St., SAN FRANCISCO.
J. A. MINOTT, Secretary. F. M. SHEPARD, President.

RUBBER CLOTHING CO., Factories, Naugatuck, Conn.
UNION INDIA RUBBER CO., Factories, 44th Avenue, 131st & 132d Sts., New York.
GOODYEAR RUBBER CO., Factories, Middletown, Conn.

# MEMORANDUM.

FROM

**RUBBER CLOTHING COMPANY,**

365 & 367 BROADWAY, Cor. Franklin St.

F. M. SHEPARD, Pres't.
J. A. MINOTT, Sec'y.

*New York, August 20, 1877.*

To Mr. VERMEULE,

GOODYEAR GLOVE CO.

Dear Sir:

Please send the 50 White Vulczd. Officer's Coats, also the Ponchos on checked Selisia to-day, if possible. The checked Ponchos we have to place on steamer in a day or two.

Yours Respy,

R. C. C.

N. T. Mulford.

THE GOODYEAR INDIA RUBBER GLOVE

175 **Defendant's Exhibit. Notice No. 1, June 28, '83.**

H. S. H., JR., *Special Examiner.*

## SPECIAL NOTICE.

Our Company was organized in 1844, and is now the oldest Manufacturing Company in the business. We have no connection whatever with a concern, lately started, styled "*GOODYEAR RUBBER CO.*" We have no branch stores any where, and our only office in New York is at our Warehouse, No. 205 Broadway and 162, 164 & 166 Fulton Street. To avoid mistakes, in future please address us in full as below—

***Goodyear's I. R. Glove M'f'g Co.,***

***205 Broadway,***

***Box 1424.*** ***New York.***

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**Defendant's Exhibit, Notice No. 2, June 28, '83.**

H. S. H., JR., *Special Examiner.*

## TO THE PUBLIC.

We beg to notify our patrons that being the oldest established *GOODYEAR'S RUBBER M'F'G CO.*, under the "*GOODYEAR'S PATENTS*," and having established an enviable reputation for our productions, there have been many rubber JOBBING and RETAILING houses started under names quite similar to ours, and we have to caution any one wishing to communicate with us to be particular and address

GOODYEAR'S RUBBER M'F'G COMPANY,

or

GOODYEAR'S INDIA RUBBER GLOVE M'F'G COMPANY,

**488, 490, 492 BROADWAY.**

**NEW YORK CITY.**

**Defendant's Exhibit, Illustration of Bill Head. Nov'r 14, 1883.**

H. S. H., Jr., *Examiner.*



**WAREHOUSES, 205 Broadway, and 162, 164, & 166 Fulton St., New York.**
**FACTORIES—NAUGATUCK, CONN.**

ESTABLISHED, 1844.

Geo. M. Allerton, President.
J. D. Vermeule, Vice-President.
R. G. Allerton, Treasurer.
Rob't S. Walker, Secretary.

*205 Broadway, New York, Dec. 31st, 1874.*

U. S. Rifle & Cartridge Co., Dr., to

ALL SALES MADE FOR
**CASH,**
(With Exchange,)
ONLY.
Bills not settled
Promptly
ARE SUBJECT TO
Draft through Bank.

# GOODYEAR'S
## India Rubber Glove M'f'g Co.,

MANUFACTURERS AND DEALERS IN

# RUBBER GOODS,

**OF EVERY DESCRIPTION,**

Articles of any desired Pattern made to order.

**All Claims for Allowances, &c., must be made within ten days from receipt of Goods.**

THE GOODYEAR INDIA RUBBER GLOVE
**Address P. O. Box 1424, N. Y.**

Rent of office for one quarter from Oct. 1st, 1874, to Dec. 31st, 1874 ---------- $125.00

Paid, Dec. 31, '74.

R. G. ALLERTON, *Treas.*

177 "DEFENDANTS' EXHIBIT LICENSE." H. S. H., Jr., Sp'l Ex'r. September 5th, 1883.

*License.*

No. 5150.

Granted Sept. 1, 1862; expires Sept. 1, 1863.

To all whom it may concern:

This license is granted to the Goodyear M'f'g Co., of the city of New York, in the county of New York and State of New York, to carry on the business or occupation of retail dealers at No. 38 John street, in the aforementioned city, county, and State, having paid the tax of ten dollars therefor conformably to the provisions of an act entitled "An act to provide internal revenue to support the Government and to pay interest on the public debt," approved July 1, 1862.

This license to be in force until the first day of Sep., 1863, provided the said Goodyear M'f'g Co. shall conform to the requirements of said act and of such other act or acts as are now or may hereafter be in this behalf enacted.

Given under my hand and seal, at my office, this 20th day of November, A. D. 1862.

[L. S.] SHERIDAN SHOOK,
*Collector of the 32d Collection District,*
*in the State of New York.*

178 DEFENDANTS' EXHIBIT GILLETT LETTER. Nov. 14, '83. H. S. H., Jr., Ex'r.

[Monogram.]

E. W. Gillett,
Manufacturer & Importer,
38 to 44 Michigan Avenue.

(Dictated letter.)

CHICAGO, 9–25, 1882.

Received Sept. 27th, 1882.

Goodyear's Rubber Man'f'g Co., New York.

GENT: Some time ago we rec'd a notice from you saying that you had rec'd from some party unknown, but presumably from us, 3,200 No. 6½ stopples, to which we replied that we had returned you but one lot, and you had returned us No. 6 to replace. It now appears that we shipped the stopples to you—which was right—and sent our letter to the Goodyear Rubber Co., which was wrong. On receipt of the letter they shipped us the No. 6 stopples, and we supposed that they were the parties to whom we had sent the 6½. After a long correspondence we have discovered our error and remit them for the

stopples that they sent us. You therefore have to our credit 3,200 No. 6½ rubber stopples, we having sent them to you ch'g's prepaid; and as our bottles are now running different size we want the 6½ stopples. Please forward same to us, via all rail fr't, without delay, and we will try and give you some orders in the future that are more profitable.

Please quote very lowest price that you can make us for 4½, 5½, 6, and 6½ stopples, and oblige

Yours truly,

E. W. GILLETT.
G.

179 **Defendant's Exhibit, Recent Style of Return Envelope. Nov. 14, 1883.**

H. S. H., JR., *Examiner.*

FACTORIES, NAUGATUCK, CONN.

GOODYEAR'S RUBBER M'F'G CO.

AND

Goodyear's I. R. Glove M'f'g Co.

RUBBER GOODS OF EVERY DESCRIPTION,

503 & 505 Broadway, St. Nicholas Hotel Block,

NEW YORK CITY.

*P. O. Box 1424.*

ESTABLISHED 1844.

**Defendant's Exhibit, Return Envelope of 1868, No. 1. Nov. 14, '83.**

H. S. H., JR., *Examiner.*

Factories, Naugatuck, Conn.

GOODYEAR'S

India Rubber Glove M'f'g Co.,

MANUFACTURERS AND DEALERS IN ALL KINDS OF

INDIA RUBBER GOODS,

WAREHOUSES,

205 Broadway and 162 & 164 Fulton Street,

Box 1424. NEW YORK CITY.

180 **Defendant's Exhibit, Return Envelope of 1868, No. 2, Nov. 14, '83.**

H. S. H., Jr., *Examiner.*

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# GOODYEAR'S

**INDIA RUBBER GLOVE M'F'G CO.,**

Manufacturers and Dealers in all kinds of

# INDIA RUBBER GOODS,

205 BROADWAY and

162 and 164 FULTON ST.,

**Box 1424.** NEW YORK CITY.

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**Defendant's Exhibit Slip and Letter, Nov. 14, '83, H. S. H., Jr., Exr.**

(Slip.)

Goodyear's Rubber Mfg Co.,

205 Broadway, New York.

Please send me 10 lbs. Rubber Rings, for Hubbard & Brown's Spring Seat.

Send by Express, C. O. D. Price $1.30 per lb.

F. M. HUBBARD.

dg % sund.

(Letter.)

Ripon, Wis., Nov. 3, 1867.

Goodyear Rubber Co.

Gentlemen: Please send me ten (10) pounds of rubber rings for

my spring wagon seat. I am giving a good many orders to
181 get the rings of you. Your bargain with me was to furnish them to my customers for $1.30 per pound and what I want at ten per cent. off. I want good rings cut $\frac{1}{8}$ of an inch long, tube one inch bore, rubber $\frac{3}{8}$ of an inch thick—the same as you sent me before. I have some cards printed to give my customers your address, but if I had some of your envelopes it would help some towards having the orders sent to you. Please send them just as quick as possible by express, with C. O. D., and oblige, yours respectfully,

F. M. HUBBARD.

DEFENDANTS' EXHIBIT ARTICLES OF INCORPORATION GOODYEAR'S INDIA RUBBER GLOVE M'F'G CO. IN NEW YORK. Nov. 14, 1883. H. S. H., Jr., Ex'r.

*Certificate of Incorporation of Goodyear's India Rubber Glove Manufacturing Company.*

We, George M. Allerton, John D. Vermeule, Robert S. Walker, and Reuben G. Allerton, all of the State of New York, do hereby certify that we are desirous to form a company pursuant to the provisions of an act of the Legislature of the State of New York entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February 17th, 1848, and of the several acts extending and amending the same.

First. That the corporate name of said company is to be Goodyear's India Rubber Glove Manufacturing Company.

Second. That the objects for which said company is formed are the manufacture and sale of all description of goods made
182 from India rubber or other similar substances and the licensing others to manufacture and vend such rubber goods under any patents said company may at any time possess and the transacting any business appertaining thereto.

Third. That the amount of capital stock of said company shall be two hundred and fifty thousand dollars.

Fourth. That the term of existence of said company is to be fifty years.

Fifth. That the number of shares of which the said stock is to consist is to be twenty-five hundred.

Sixth. That the number of trustees who shall manage the concerns of said company for the first year is four.

Seventh. That the names of said trustees are George M. Allerton, John D. Vermeule, Robert S. Walker, Reuben G. Allerton.

Eighth. That the names of the town and county in which the operations of said company are to be carried on and in which its principal place of business is to be located are the city and county of New York.

GEO. M. ALLERTON. [SEAL.]
JOHN D. VERMEULE. [SEAL.]
ROB'T J. WALKER. [SEAL.]
R. G. ALLERTON. [SEAL.]

STATE OF NEW YORK, } ss:
*City and County of New York,* }

On this 18th day of March, 1873, before me personally appeared George M. Allerton, John D. Vermeule, Robert S. Walker, and Reuben G. Allerton, to me known to be the individuals described in and who executed the foregoing certificate, and they severally acknowledged that they executed the same for the purposes therein mentioned.

JAMES K. AYMAR,
*Notary Public, N. Y. County.*

183 (Endorsed:) Filed March 20, 1873.

STATE OF NEW YORK, } ss:
*City and County of New York,* }

I, Charles E. Loew, clerk of the said city and county and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original certificate of the incorporation of Goodyear's India Rubber Glove Manufacturing Co. on file in my office, and that the same is a correct transcript therefrom and of the whole of such original.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 24th day of March, 1873.

[SEAL.] CHAS. E. LOEW, *Clerk.*

DEFENDANTS' EXHIBIT ARTICLES OF INCORPORATION GOODYEAR'S RUBBER M'F'G CO. IN NEW YORK. Nov. 14, 1883. H. S. H., Jr., Ex'r.

*Certificate of Incorporation of Goodyear's Rubber Manufacturing Company.*

We, George M. Allerton, John D. Vermeule, Robert S. Walker, and Reuben G. Allerton, all of the State of New York, do hereby certify that we are desirous to form a company pursuant to the provisions of an act of the Legislature of the State of New York entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February 17th, 1848, and of the several acts extending or amending said act.

184 First. That the corporate name of said company is to be "Goodyear's Rubber Manufacturing Company."

Second. That the objects for which said company is formed is the manufacture and sale of various descriptions of goods made from India rubber and other substances under certain patents and otherwise and the licensing others to manufacture and vend such rubber goods and the transacting any business appertaining thereto.

Third. That the amount of the capital stock of said company shall be two hundred and fifty thousand dollars.

Fourth. That the term of existence of said company is to be fifty years.

Fifth. That the number of shares of which the said stock is to consist is to be twenty-five hundred.

Sixth. That the number of trustees who shall manage the concerns of said company for the first year is four.

Seventh. That the names of said trustees are George M. Allerton, John D. Vermeule, Robert S. Walker, and Reuben G. Allerton.

Eighth. That the names of the town and county in which the operations of said company are to be carried on are the city and county of New York, but a part of the operations of said company are to be carried on in Naugatuck, in the State of Connecticut, and elsewhere.

GEO. M. ALLERTON. [SEAL.]
JOHN D. VERMEULE. [SEAL.]
ROB'T S. WALKER. [SEAL.]
R. G. ALLERTON. [SEAL.]

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

On this 18th day of March, 1873, before me personally appeared George M. Allerton, John D. Vermeule, Robert S. Walker, and
185 Reuben G. Allerton, to me known to be the individuals described in and who executed the foregoing certificate, and they severally acknowledged that they executed the same for the purposes therein mentioned.

JAMES H. AYMAR,
*Notary Public, N. Y. County.*

(Endorsed:) Filed March 20th, 1873. Anson S. Wood.

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

I, Charles E. Loew, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original certificate of the incorporation of Goodyear's Rubber Manufacturing Co., on file in my office, and that the same is a correct transcript therefrom and of the whole of such original.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 24th day of March, 1873.

[SEAL.] CHARLES E. LOEW, *Clerk.*

DEFENDANTS' EXHIBIT ARTICLES OF ASSOCIATION OF GOODYEAR'S RUBBER M'F'G CO., IN CONN. Nov. 14, 1883. H. S. H., Jr., Ex'r.

*Articles of Association of "The Goodyear's Rubber Manufacturing Company."*

Be it known that we, the subscribers, do hereby associate ourselves in a body politic and corporate, pursuant to the provisions of the statute laws of the State of Connecticut regulating the forma-
186 tion and organization of joint stock corporations, and the following are the articles of our association and agreement:

Article I.

The name of said corporation shall be "The Goodyear's Rubber Manufacturing Company."

Article II.

The capital stock of said corporation shall be one hundred thousand dollars, divided into four thousand shares of twenty-five dollars each.

Article III.

The purpose for which said corporation is formed is the following, viz: To manufacture, sell, and deal in all kinds of India-rubber goods and merchandise and machinery and in goods, wares, and merchandise composed wholly or in part of India rubber; to buy, sell, and deal in such other wares and merchandise as may be convenient in connection with said business, and to keep a wholesale and retail store, with such branches as may be established; to buy, sell, own, and deal in any real or personal property necessary or convenient for the prosecution of said business, and generally to do all things incidental to said business and the proper management thereof.

Article IV.

The statute laws of the State of Connecticut relating to joint stock corporations are hereby particularly referred to and made part of these articles, and the corporation hereby established and organized under said statute laws shall have the powers and proceed according to the regulations described and specified therein.

Article V.

Each subscriber to these articles agrees to take the number of
187 shares of the capital stock annexed to his name, each share to be of the par value of twenty-five dollars, and to pay not less than twenty per cent. in cash at the time of subscription, and the balance thereof in installments, as the directors may call in the same.

Article VI.

The said corporation is established and located in the town of Naugatuck, county of New Haven and State of Connecticut.

Dated at Naugatuck this 23d day of March, A. D. 1882.

| Subscribers' names. | No. of shares. |
|---|---|
| GEO. H. ALLERTON | Two thousand shares (2,000). |
| JOHN D. VERMEULE | Twelve hundred " (1,200). |
| HEMAN BURR | One hundred " (100). |
| G. M. ALLERTON, JR. | Three hundred " (300). |
| S. W. KELLOGG | Two hundred " (200). |
| I. W. SMITH | One hundred " (100). |
| B. M. HOTCHKISS | One hundred " (100). |

DEFENDANTS' EXHIBIT AMENDMENT OF CONN. ARTICLES. Nov. 14, 1883. H. S. H., Jr., Ex'r.

Be it known that we, the undersigned, being all the stockholders of the Goodyear's India Rubber Glove Manufacturing Co., a joint stock corporation organized under the statute laws of this State and located in Naugatuck, in New Haven county, in pursuance of said statute laws, do hereby agree to amend the articles of association under which the said corporation was organized by erasing that part of said articles describing the purpose for which said corporation was formed and inserting in lieu thereof the following, to wit:

The purpose for which said corporation is formed is the following, to wit: To manufacture, sell, and deal in all kinds of India-
188 rubber goods and merchandise and in machinery and in goods, wares, and merchandise composed in part of India rubber; to buy, sell, and deal in such other wares and merchandise as may be convenient in connection with said business, and to keep a wholesale and retail store with such branches as may be established; to buy, sell, own, and deal in any real or personal property necessary or convenient for the prosecution of said business, and generally to do all things incidental to said business and to the proper management thereof; and the statute laws of the State of Connecticut relating to joint stock corporations are hereby particularly referred to and made part of said articles of association.

Dated at Naugatuck this 7th day of August, A. D. 1867.

GEO. M. ALLERTON.
R. G. ALLERTON.
ROB'T S. WALKER.
J. W. KELLOGG.
B. M. HOTCHKISS.

A certificate of the foregoing amendment of articles of association was deposited in the office of the secretary of state, and a duplicate thereof with the town clerk of the town of Naugatuck, and the said amendment was subscribed by all the stockholders and published in two newspapers printed in New Haven county, in which county said corporation is located, according to the provisions of the statute law of Connecticut.

Attest: ROBERT S. WALKER, *Secretary.*

**Defendant's Exhibit, F. M. & W. A. Shepard 1865 Bill, March 15, 1883.**
J. A. S., *Examiner.*





[CUT.]

MANUFACTURERS OF THE
GOODYEAR SYRINGES.
SOLE AGENTS FOR
Morey & Smith's and Richardson's Syringes.

NET CASH.

**New York, June 13, 1865.**

*M* GOODYEAR I. R. G. Co.,

**Bought of** F. M. & W. A. SHEPARD,

WHOLESALE DEALERS IN

RUBBER GOODS OF EVERY DESCRIPTION.

F. M. & W. A. SHEPARD,
F. D. DUDLEY.

**150 WILLIAM STREET.**

| | | | |
|---|---|---|---|
| ½ doz. 5 Syringes, 22.50 | | 11.25 | |
| | | 1.12 | |
| | 10 & 6 | 10.13 | |
| | | 61 | |
| | | | 9.52 |

J. G. W.

**Defendant's Exhibit, Rubber Clothing Company 1865 Bill, March 15, 1865.**

J. A. S., *Examiner.*

[CUT.]

*M* GOODYEAR I. R. G. Co.,

F. M. SHEPARD, Pres't.
J. A. MINOTT, Sec'y.

BOOTS & SHOES, GLOVES, Hard Rubber Goods, Fancy Colored Balls, Syringes, & Druggists' Articles.
HOSE, ENAMELED CLOTHS, ETC.

*New York, Jan'y 18, 1865.*

**Bought of** THE RUBBER CLOTHING CO,,

MANUFACTURERS OF

Rubber Clothing, Army Blankets, Knapsacks, Carriage Cloth, Etc.,

Dealers in all kinds of RUBBER GOODS.

.....*Cases.*
.....*Bales.*
.....*Bundles.*

**Forwarded by**

| | | | | |
|---|---|---|---|---|
| 1008 feet $\frac{3}{16}$ Tubing, .17 | | | 171.36 | |
| 30 " 6 in 3-ply Belt, .87 | | | 26.10 | |
| $\frac{1}{2}$ doz. 3 Cement, 6.00 | | | 3.00 | 300.46 |
| | A. M. | 20 % | | 60.09 |
| | | | | 240.37 |
| | R. W. | 6 % | | 14.42 |
| | | | | 225.95 |

191 DEFENDANTS' EXHIBIT VERMILYE ORDER. April 14th, 1883.
J. A. S., Examiner.

Office of Wm. G. Vermilye, India rubber goods of all descriptions, No. 6 Park place.

NEW YORK, *July* 17, 1869.

Mr. Goodyear & Co.:

Please deliver immediately, at No. 6 park place, the following goods:

1 steel punch.

W. G. VERMILYE,
P.

(Section referred to on pp. 66 and 67:)

SEC. 2. Said Goodyear India Rubber Glove Manufacturing Company shall be and remain a body politic and corporate by that name, located at said Naugatuck, and shall have and enjoy its said corporate franchise and all the rights and privileges herein granted for the purpose of manufacturing, selling, and dealing in all kinds of India rubber goods and merchandise and machinery and in goods, wares, and merchandise composed wholly or in part of India rubber; to buy, sell, and deal in such other wares and merchandise as may be convenient in connection with said business, and to
192 keep a wholesale and retail store, with such branches as may be established; to buy, sell, own, and deal in any real or personal property necessary or convenient for the prosecution of said business; and in and by said corporate name said corporation shall be, and is hereby, vested with the title to all the goods, chattels, lands, buildings, machinery, property, choses in action, patents, trademarks, and effects of whatever nature hetofore acquired by and now belonging to said corporation, and is hereby authorized and empowered, in addition thereto, to purchase, take, hold, occupy, and enjoy to itself and assigns any such property, real or personal, including letters patent, as will enable it the better to carry on said business to advantage, and the same may manage, control, convey, sell, and dispose of at pleasure; and may purchase and hold, either directly or through agents or trustees, all rights, easements, franchises, interest, stocks, and estate that may be advantageous to or convenient in the prosecution of said business, and the right to sell, lease, mortgage, or pledge the same; may take and execute leases of real estate, may sue and be sued, defend and be defended, in any court of record or elsewhere, and may have and use a common seal, and alter the same at pleasure.

COMPLAINANT'S EXHIBIT 1. July 24, 1883. H. S. H., Jr., Ex'r.

[SEAL.] STATE OF CONNECTICUT,
OFFICE OF SECRETARY OF STATE.

Goodyear's India Rubber Glove Manufacturing Company.

NAUGATUCK, *June 1st*, 1847.

193 This certifies that the subscribers and others have associated themselves as a body politic and corporate under the name "Goodyear's India Rubber Glove Manufacturing Company," pursuant to the statute of the State of Connecticut passed May session, A. D. 1837, and entitled "An act relating to joint-stock corporations."

The purpose for which the above corporation is established is the manufacturing and selling of India-rubber gloves and mittens and other India-rubber goods, together with keeping a retail dry goods and grocery store.

The capital stock of said corporation is six thousand dollars, and is divided into shares of twenty-five dollars each, two hundred and forty of which shares are taken and subscribed by the parties as follows, to wit:

Francis Spencer has subscribed and taken one hundred shares.

Barrillai Arnst has subscribed and taken four shares.

Gustavus Spencer has subscribed and taken one hundred and thirty-six shares.

FRANCIS SPENCER,
*President.*
GUSTAVUS SPENCER,
FRANCIS SPENCER,
*Directors.*

NEW HAVEN COUNTY, *ss:*

NAUGATUCK, *June 7th*, 1847.

Personally appeared Francis Spencer, as president of "Goodyear's India Rubber Glove Manufacturing Company," and Gustavus Spencer and Francis Spencer, as directors of said company, signers of the within and foregoing certificate, and made oath to the truth of the same before me.

CHARLES NETTLETON,
*Justice of the Peace.*

Received and recorded June 9th, 1847, by—
JOHN B. ROBERTSON,
*Secretary of State.*

194 STATE OF CONNECTICUT, *ss:*

OFFICE OF SECRETARY OF STATE.

I, Charles E. Searls, secretary of the said State of Connecticut, and keeper of the seal thereof and of the original record of the certificate of the organization of Goodyear's India Rubber Glove Manufacturing Company, of which a copy is hereto annexed, do hereby

certify that I have compared the annexed copy of the said certificate with the original record thereof, now remaining in this office, and have found the said copy to be a correct transcript thereof and of the whole of the said original; and I further certify that the said original record is a public record of the said State of Connecticut, and does not appertain to a court; that the original certificate was deposited in this office on the 9th day of June, 1847, and recorded in a book kept for that purpose.

In testimony whereof I have hereunto set my hand and affixed the seal of said State, at Hartford, this 17th day of November, 1882.

[SEAL.] CHARLES E. SEARLS,
*Secretary of State.*

COMPLAINANT'S EXHIBIT POSTAL CARD. October 31, 1883. H. S. H., Jr., Ex.

NEW YORK, *Oct.* 23, 1883.

The New York Oil Cabinet Co., 180 to 186 Cherry street, New York:

Please send me on receipt of this, or as soon as convenient, one of your Wiley Patent Safety Oil Cabinets, 20 gallons. Compartment. Price, $—. Remarks:

195 Please send me the cabinet which I looked at this morning, second-hand, 20 gallons. Price, $10.00, and oblige

Yours, &c.,

GOODYEAR RUBBER CO.,
108 *Wooster Street.*
R. S. SCOFIELD.

Reverse: The New York Oil Cabinet Co., 180 to 186 Cherry street, New York City. Box 2012.

**Defendant's Exhibit—Stationery. January 24, 1884.**

H. S. H., Jr., Exr.

Geo. M. Allerton, Pres. ALL CLAIMS FOR ALLOWANCES, &C., MUST BE MADE WITHIN TEN DAYS FROM RECEIPT OF GOODS. J. D. Vermeule, Vice-Pres.

ARTICLES OF ANY DESIRED PATTERN MADE TO ORDER.

*New York,* _____ 188_

BOUGHT OF **GOODYEAR'S RUBBER M'F'G CO.**

AND

Goodyear's India Rubber Glove M'f'g Co.

WAREHOUSES,

488, 490 & 492 BROADWAY, Cor. BROOME ST.

205 BROADWAY, Cor. FULTON St.,

NEW YORK CITY.

P. O BOX 1424. FACTORIES, NAUGATUCK, CONN. ESTABLISHED 1884.

197 United States Circuit Court, Southern District of New York.

GOODYEAR RUBBER COMPANY

*vs.*

GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, Goodyear's Rubber Manufacturing Company, George M. Allerton, and John D. Vermeule.

Testimony taken on the part of the complainant under and pursuant to the 67th rule of the Supreme Court of the United States, before John A. Shields, Esq., a standing commissioner of said court, at the office of MacFarland, Reynolds & Lowrey, 61 Wall street, New York, Friday, Feb. 1, 1884.

Appearances: Wm. W. MacFarland, for complainant; C. W. Betts, for defendant.

198 DAVID N. ROPES, a witness called by complainant, being duly sworn, testified as follows:

1 Q. What is your name, age, and occupation?

A. David N. Ropes; of lawful age; residence, Orange, New Jersey; occupation, president of the Vulcanite Jewelry Co., 104 Chambers street, city of New York.

2 Q. Were you the agent of the owner of the building on Broadway, now occupied by the Goodyear Rubber Co., at any time prior to its being leased to that company?

A. I was; have had charge of the building for eight or ten years; was some six or seven years prior to the time at which it was leased to them.

3 Q. State, if you please, the circumstances attending the renting of that building to its present occupants.

A. I had, as agent for the owner, leased the whole building to the Pennsylvania Railroad Co. in the month of November, 1881, or had agreed to lease it, making a verbal agreement with them. About a month afterwards they declined taking the premises, and knowing that the Rubber Clothing Co. were about moving from the store then occupied by them in Broadway, I went to Mr. Shepard, the president of the company, and stated to him that I had this building for rent, and that it would be just the place for him for his business. He examined the premises and rented them of me very soon after.

4 Q. The negotiation was opened by you?

A. It was. Mr. Shepard did not come to me; I went to him.

5 Q. How long have you been connected with the India-rubber trade?

A. Since July, 1855.

6 Q. You are still connected with it?

A. I am still president of the Vulcanite Jewelry Company.

7 Q. Your business occupation has extended to the various branches of that trade?

A. It has in the sale of hard rubber goods; never in the soft rubber.

199 8 Q. How long have you known of Goodyear's India Rubber Glove Manufacturing Company?

A. I think they were in business at the time I became connected with the rubber business and have remained in it ever since. I have known them ever since in business.

9 Q. By what name or abbreviation of name has that company been known to you, and, so far as you know, to the trade generally during that whole period?

Objected to as immaterial so far as the witness' knowledge is concerned, and as incompetent in regard to the rest of the trade.

A. I have known them as the Goodyear India Rubber Glove Manufacturing Company; that, I think, was their whole title. The company with which I am connected have sold them goods, and I think that has always been the name on our books and by which we have known them.

10 Q. Are you able to state whether the company was known to the trade generally under that name or some abbreviation of it?

A. So far as my knowledge goes, they were generally known as the glove company—the rubber glove company—the short name in speaking of them. They were generally spoken of as the glove company.

11 Q. I understand you to say that is the name by which they were generally known for short in the trade in speaking of the company?

Same objection.

A. So far as my knowledge goes, it was.

12 Q. Has your knowledge of the trade been extensive or otherwise during the period of your connection with it?

A. I was connected a good many years with the India Rubber Comb Co. Yes; I should say that I had a general knowledge of the rubber business since 1855.

200 Cross-examination of DAVID N. ROPES by Mr. BETTS:

1 X Q. Do you remember what dealers in rubber goods have, to your knowledge, called the Goodyear's India Rubber Glove Manufacturing Company by the abbreviated title of glove company?

A. I could not specify any one in particular.

2 X Q. Can you state how many you have heard do so?

A. I cannot.

3 X Q. Can you state any one to whom you have called the company by that name?

A. I cannot specify any one in particular.

4 X Q. Are you in any way connected with the complainant in this case, or have you been in business connection with it?

A. No other way than having, as I have stated, leased them the building which they occupy, and having sold them goods manufactured by the companies with which I have been connected.

5 X Q. These companies all deal in hard rubber goods, do they not—the companies with which you are connected?

A. They do. We have sold and do now sell goods to the clothing company and to the glove company. They are both customers of ours.

6 X Q. What sort of goods do you sell to the Goodyear's India Rubber Glove Manufacturing Company?

A. Jewelry and hair ornaments principally—combs—principally those.

7 X Q. Have you stated all the conversation that you had with Mr. Shepard upon the occasion of the leasing to the rubber clothing company of the building they now occupy?

A. It would be impossible for me to state all the conversation I had with him.

8 X Q. Do you remember whether he said anything to you about wishing to occupy the corner of Broadway and Broome street for any reason?

A. I do not recollect that he said anything to me about it.

201 I know that I urged upon him the desirability of the location, being a broad street; and, having the building to rent, of course I did what I could to get him to take it.

9 X Q. Was anything said about the peculiar business facilities that were offered by the location on that corner on account of the previous occupation by the Goodyear's India Rubber Glove Manufacturing Company and the knowledge that the public had of that location?

A. I think nothing of that kind could have been said, for I am not aware they ever occupied it—not since I had anything to do with it.

10 X Q. You knew that they occupied one of the corners, did you not—Broadway and Broome street?

A. I knew that they occupied a corner of Broome street, but not this corner; I understood your question to refer directly to this corner.

11 X Q. Was anything said in that conversation about the Goodyear's India Rubber Glove Manufacturing Company having occupied a corner of Broadway and Broome street?

A. Not to my recollection, and if there had been I think I should have remembered it.

DAVID N. ROPES.

Sworn to and subscribed before me this 8th day of February, 1884.

JOHN A. SHIELDS, *Examiner.*

ROBERT S. WALKER, called by complainant, being duly sworn, testified as follows:

1 Q. What is your name, age, and occupation?

A. Robert S. Walker; of lawful age; publisher and broker; place of business, 231 Broadway.

2 Q. Were you at any time, if so, at what period, secretary

202 of the Goodyear's India Rubber Glove Manufacturing Company?

A. I was secretary between the years 1862 and 1879.

3 Q. Embracing a period of 17 years?

A. Seventeen years; it may have been 1861—it was 1861 or 1862.

4 Q. In that capacity did you have the charge of the general correspondence of the company?

A. I did.

5 Q. What was the name usually employed in writing letters by and in writing letters to the company in the correspondence generally?

A. The legal title of the company, Goodyear's India Rubber Glove Manufacturing Company.

6 Q. The correspondence of the company was extensive?

A. Yes, sir.

7 Q. Embracing, I suppose, many thousand letters in the course of a year?

A. Yes, sir.

8 Q. Your answer to my question is intended to embrace the whole period of your service as secretary?

A. Yes, sir.

9 Q. If any abbreviations of the full legal title were any time used what was the usual character of the abbreviation? And, when I speak of abbreviations being employed, I refer as well to letters received as to letters written—to the correspondence generally.

Objected to as not the best evidence, the matter being one of documentary proof.

A. Many of our letters, invoices, and bills were addressed to the company by different titles; the full title was abbreviated—sometimes the Goodyear Glove Company; sometimes the I. R. Glove Co.; sometimes simply the Glove Co., and sometimes letters came to us Goodyear Rubber Co. or Goodyear Rubber Manufacturing Co.—various titles; there was considerable variety in the addresses of our letters.

Same objection to the answer, and notice is given of motion
203 to strike it out as not the best evidence, the matter being capable of documentary proof.

10 Q. The great bulk of the correspondence was under what name?

Same objection and notice.

A. Under the name of the legal title of the company—the Goodyear's India Rubber Glove Manufacturing Company.

11 Q. So that, if I understand you, these variations were the exceptions to the general rule and practice.

Same objection.

A. Yes.

12 Q. Do you know the handwriting of Mr. S. W. Kellogg?

A. I do.

13 Q. Will you look at the letter which I show you, dated Waterbury, Ct., Oct. 21, 1878, and the receipt attached to it and state if the letter and receipt are in his handwriting?

Objected to as immaterial.

A. It is, to the best of my knowledge and belief.

14 Q. I ask you whether the bill, dated August 27, 1878, which I hand you, certified as correct by Mr. Kellogg, is in his handwriting?

A. Yes, sir.

15 Q. The signature under the words "please remit," and so forth, is that of the late Mr. George M. Allerton, is it not?

A. It is.

Mr. MacFarland: I offer in evidence the letter and the receipt appended to it, and it is marked Complainant's Exhibit, Feb. 1st, 1884, No. 28.

16 Q. I hand you a receipt dated July 6, 1859, signed Goodyear Glove Co., by Geo. M. Allerton, treas., and underneath M. B. Allerton. Do you recognize these signatures?

A. I recognize this signature as the signature of the treasurer, Mr. Geo. M. Allerton's father.

17 Q. Was he in the service of the glove company?

A. He was, I think. I was not then in the employ of that company.

204 Mr. MacFarland: I offer this receipt in evidence and mark it in blue pencil 1.

Objected to, as the agency of M. B. Allerton is not proved.

18 Q. I show you receipt dated July 16, 1859, signed Goodyear's Glove Co., per A. B. Travis. Who was Mr. A. B. Travis—do you know?

A. He was a clerk in the employ of the company for some years, and had been there for some time when I came there, and I believe he is there yet.

Mr. MacFarland: I offer this receipt in evidence and mark it in blue pencil 2, and offer also those which I am about to show the witness and question him upon, marking them with their proper number as taken up.

19 Q. I show you receipt dated June 2, 1860, signed Geo. M. Allerton, trea., for Goodyear I. R. Glove M'f'g Co. (marked 3). Do you recognize the signature?

A. I do.

20 Q. As that of Mr. George M. Allerton, the treasurer?

A. Yes, sir.

21 Q. Another dated Aug. 8th, 1860, signed Goodyear Glove Co., per A. B. Travis (marked 4).

A. I recognize that as the signature of the same Mr. Travis.

22 Q. Another dated Oct. 8, '60, signed Goodyear I. R. Glove M'f'g Co., M. B. Allerton (marked 5). Do you recognize that signature?

A. Yes. It is the signature of Mr. Allerton's father.

23 Q. Was he in the employment of the glove company?

A. That date is before my connection with that company. He was in the employ of the company when I went there, and that is all the knowledge I have of it.

24 Q. Another dated Nov. 19, 1860, signed Geo. M. Allerton, trea. Goodyear I. R. Glove M'f'g Co. (marked 6). Is that the signature of the treasurer?

A. I recognize that as Mr. Allerton's signature.

205 25 Q. Another dated March 4, '61, signed Goodyear I. R. Glove M'f'g Co., M. B. Allerton (marked 7). Do you recognize the signature?

A. Yes; signature of Mr. Allerton's father.

26 Q. Another, bearing same signature, under date Feb. 4, '62 (marked 8)?

A. I recognize that.

27 Q. Another, bearing same signature, under date of Ap'l 8, '62 (marked 9)?

A. I recognize that.

28 Q. Another under date May 7, '62, bearing same signature (marked 10)?

A. I recognize that.

29 Q. Another under date June 14, '62, bearing same signature (marked 11)?

A. I recognize that.

30 Q. Another dated July 26, '62, bearing the same signature (marked 12); do you recognize that as the signature of Mr. Travis?

A. Yes, sir.

31 Q. Another dated Oct. 1st, 1862, signed Goodyear I. R. M'f'g Co., Robert S. Walker (marked 13)?

A. I recognize that as my signature.

32 Q. Another dated June 18, '63, bearing the signature Goodyear I. R. Glove M'f'g Co., M. B. Allerton (marked 14)?

A. I recognize that as the signature of Mr. Allerton's father.

33 Q. Of the treasurer's father?

A. Yes; Mr. Allerton was treasurer at that time.

34 Another under date Sept. 1st, '63, signed Glove Co., R. G. A. (marked 15)?

A. That is the writing of Reuben G. Allerton; he became treasurer of the company about that time; I presume he was when that was written, but I don't know.

35 Q. Another under date July 10, '63, signed Goodyear I. R. Glove M'f'g Co., M. B. Allerton (marked 16)?

A. I recognize that as the signature of Mr. Allerton's father.

36 Q. Another under date of Aug. 12, 1863, signed Goodyear I. R. Glove M'f'g Co., per R. G. Allerton (marked 17)?

A. I recognize that as Mr. R. G. Allerton's signature.

37 Q. Another dated Jan. 12, '64, bearing the signature Goodyear's I. R. Glove M'f'g Co., by E. W. Bullinger (marked 18); who is Mr. Bullinger?

206 A. I recognize that; he was the book-keeper of the company.

38 Q. Another, April 13, '64, signed Goodyear's I. R. Glove M'f'g Co., by E. W. Bullinger (marked 19)?

A. I recognize that as his signature.

39 Q. Another under date May 11, '64, signed Goodyear's I. R. Glove M'f'g Co., by E. W. Bullinger (marked 20); is that the same Mr. Bullinger's signature?

A. Yes, sir; same Mr. Bullinger; I recognize it.

40 Q. Another dated Feb. 10, 1865, signed G. I. R. Glove M'f'g Co., by E. W. Bullinger (marked 21); is that the same Mr. Bullinger?

A. Yes, sir.

41 Q. Another under date May 9th, 1865, bearing the signature Goodyear's I. R. M'f'g Co., per James G. Wells (marked 22); who was Mr. Wells?

A. He was one of our clerks—entry clerk, I think, at that time.

42 Q. Is that his signature?

A. Yes, sir.

43 Q. Another under date June 7, '65, signed "G. I. R. Glove M'f'g Co., by E. W. Bullinger" (marked 23); is that the signature of the same Mr. Bullinger?

A. Yes, sir; same one.

44 Q. Another under date Oct. 13, 1865, signed "Goodyear's I. R. Glove M'f'g Co., per R. G. Allerton" (marked 24)?

A. I recognize that as Mr. Allerton's signature.

45 Q. Another under date of Feb. 12, '68, signed "Goodyear's Glove Co., per Sweet" (marked 25)?

A. He was one of our clerks—book-keeper, I think, at that time.

46 Q. Another under date March 9, 1868, signed "Goodyear's I. R. Glove M'f'g Co., per Gray" (marked 26); who was Gray?

A. He was one of our clerks.

47 Q. Is that his signature?

A. Yes; that is his signature.

48 Q. Another, June 19, 1868, signed "Goodyear's I. R. Co.,
207 Charles T. Carnes" (marked 27); do you recognize that signature?

A. I do not remember the young man at all.

49 Q. Another, Aug. 20, 1858, signed "Goodyear's Glove Co., Gray" (marked 28); do you recognize that as the signature of the Mr. Gray before referred to?

A. Yes, sir.

50 Q. Another under date Sep. 23, 1868, signed "Goodyear's Glove Co., per J. W. Turner" (marked 29); do you recognize that signature?

A. We had a J. W. Turner in our employ, but I am not familiar enough with his writing to swear to it.

51 Q. Another, Nov. 19, 1868, signed "Goodyear Glove Co., per Gray" (marked 30); do you recognize that?

A. This is the signature of the same Mr. Gray.

52 Q. Another dated Dec. 31, '68, signed "Goodyear Glove Co., per Gray" (marked 31); do you recognize that as the signature of the same Mr. Gray?

A. Yes, sir.

53 Q. Another dated Jan. 11, 1869, signed "Goodyear Glove Co., per Gray" (marked 32); is that the same signature?

A. Yes, sir.

54 Q. Another dated Feb. 16, '69, signed "Goodyear Glove Co., per A. P. L." (marked 33); do you recognize that signature?

A. Yes; I recognize it as the writing of Alfred Leaycraft.

55 Q. Who was he?

A. He was one of the office boys of the company.

56 Q. Another dated March 18, 1869, signed "Goodyear's Glove Co., per Gray" (marked 34); is that the signature of same Mr. Gray?

A. Same Mr. Gray.

57 Q. Another dated April 14, 1869, signed "Goodyear Glove Co., per Teale" (marked 35).

A. I do not recognize that.

58 Q. Another dated July 21st, '69, signed "Goodyear's I. R. Glove Co., Folsom" (marked 36).

A. I recognize that signature.

208 59 Q. Another dated Aug. 12, '39, signed "Goodyear Glove Co., per A. P. L." (marked 37).

A. I recognize that as the writing of Alfred Leaycraft.

60 Q. Who was he?

A. He was one of our clerks—collector, &c., assistant in the office—one of the office boys.

61 Q. Another under date of Feb. 17, '70, signed "Goodyear's I. R. Glove Co., per McD." (marked 38); do you recognize that?

A. I recognize that as the writing of James MacDonald.

62 Q. Who was he?

A. One of our clerks.

63 Q. Another under date Ap. 19, '70, signed "Goodyear Glove Co., per A. P. L." (marked 39); do you recognize that signature?

A. Yes; that is Leaycraft's signature.

64 Q. Another dated May 20, '70, signed "Goodyear Glove Co., per A. P. L." (marked 40).

A. I recognize that as Mr. Leaycraft's writing.

65 Q. Another dated July 28, 1870, signed "Goodyear's I. R. Glove Co., per Brotherton" (marked 41).

A. I recognize that as the writing of James Brotherton.

66 Q. Who was he?

A. One of our clerks.

67 Q. Another dated Nov. 17, 1870, signed "Goodyear's Glove Co., Brotherton" (marked 42); is that the signature of Mr. Brotherton before mentioned?

A. Yes, sir.

68 Q. Another dated Dec. 15, 1870, signed "Goodyear's I. R. Glove Co., Brotherton" (marked 43); is that the signature of the same Mr. Brotherton?

A. Yes, sir.

69 Q. Another dated Feb. 17th, 1871, signed "Goodyear's Glove Co., per Andrew B. Travis" (marked 44); do you recognize that signature?

A. Yes; the same Mr. Travis before mentioned.

70 Q. Another dated Ap'l 19, 1871, signed "Goodyear's I. R. G.

M'f'g Co., Brotherton" (marked 45); do you recognize that as Mr. Brotherton's signature?

A. Yes, sir.

209 71 Q. Another dated May 16, 1871, signed "Goodyear's I. R. G. M'f'g Co., Brotherton" (marked 46); is that Mr. Brotherton's signature?

A. Yes, sir.

72 Q. Another dated June 16, 1871, signed "Goodyear's I. R. M'f'g Co., Brotherton" (marked 47).

A. I recognize that as Mr. Brotherton's signature.

73 Q. Another under date of July 12, 1871, signed "Goodyear's Glove Co., per McD." (marked 48).

A. I recognize that as the writing of James MacDonald before mentioned.

74 Q. Another dated Aug. 19, 1871, signed "Goodyear I. R. M'f'g Co., Folsom" (marked 49).

A. I recognize that as the signature of *the* Folsom before mentioned.

75 Q. Another dated Oct. 19, 1871, signed "Goodyear's Glove Co., A. R. L." (marked 50).

A. That is the signature of Alfred Leaycraft.

76 Q. Another dated Nov. 17, 1871, signed "Goodyear's Glove Co., A. R. L." (marked 51); is that the same Alfred Leaycraft's signature?

A. Same one.

77 Q. Another dated Feb. 17, 1872, signed "Goodyear's I. R. M'f'g Co., Folsom" (marked 52); is that the signature of the same Folsom?

A. Yes, sir.

78 Q. Another dated May 21, 1872, signed "Goodyear's Glove Co., A. R. L." (marked 53); is that the same Alfred Leaycraft?

A. Yes, sir.

79 Q. I call your attention to one under date of Aug. 13, 1872, in which the name Goodyear's India Rubber Glove M'f'g Co. appears in print, and underneath Geo. H. Folsom (marked 54); is that the signature of the same Mr. Folsom?

A. Yes, sir.

80 Q. Another dated Oct. 21, 1872, signed "Goodyear I. R. Glove Co., Hovey" (marked 55); whose signature was that?

A. He was one of our clerks—Richard Hovey.

210 81 Q. Another dated Nov. 22, 1872, signed "Goodyear I. R. Glove Co., Hovey" (marked 56).

A. I recognize that as the signature of the same Hovey.

82 Q. Another dated Feb. 17, 1873, signed "Goodyear I. R. Glove Co., Hovey" (marked 57).

A. I recognize that.

83 Q. Another dated March 18, 1873, signed "Goodyear I. R. Glove Co., Hovey" (marked 58); is that the signature of the same Hovey?

A. Yes, sir.

84 Q. Another dated May 16, 1873, signed "Goodyear I. R. Glove Company, Hovey" (marked 59); is that the signature of the same Hovey?

A. Yes, sir.

85 Q. Another dated June 19, 1873, signed "Goodyear I. R. Glove Co., Hovey" (marked 60).

A. I recognize that as the same signature.

86 Q. Another dated July 15, 1873, signed "Goodyear I. R. Glove Co., Hovey" (marked 61).

A. I recognize that.

87 Q. Another dated Aug. 19, 1873, signed "Goodyear I. R. Glove Co., Hovey" (marked 62).

A. I recognize that.

88 Q. Another dated Nov. 19, 1873, signed "Goodyear I. R. Glove Co., Hovey" (marked 63).

A. I recognize that.

89 Q. Another dated Dec. 23, 1873, signed "Goodyear I. R. Glove Co., Hovey" (marked 64).

A. I recognize that.

90 Q. Another dated Jan. 24, 1874, signed "Goodyear I. R. Glove Co., Hovey" (marked 65).

A. I recognize that.

91 Q. Another dated April 20, 1874, signed "Goodyear I. R. Glove Co., Hovey" (marked 66).

A. I recognize that.

92 Q. Another dated May 25, 1874, signed "Goodyear I. R. Glove Co., Hovey" (marked 67).

A. I recognize that.

211 93 Q. Another dated Aug. 21, 1874, signed "Goodyear I. R. Glove Co." (marked 68); do you recognize the handwriting of the receipt?

A. No; not sufficiently well to identify it; it looks like Folsom's writing, but I won't swear to it.

94 Q. Another dated February 12, 1870, bearing the signature Goodyear's India Rubber Glove M'f'g Co. (in print), per (in print) Leaycraft (in writing) underneath (marked 69); do you recognize the signature?

A. I do.

95 Q. The same Leaycraft?

A. Yes, sir.

96 Q. Another dated Aug. 24, 1870, signed "Goodyear's I. R. Glove Co., Brotherton" (marked 70).

A. I recognize that as the same Brotherton.

97 Q. Another dated August 26, 1870, signed "Goodyear's I. R. Glove Co., Brotherton" (marked 71).

A. I recognize that.

98 Q. Another dated Dec. 11, 1871, signed "Goodyear's I. R. Glove M'f'g Co., R. G. Allerton, trea." (marked 72).

A. I recognize that as his signature.

99 Q. Another dated April 10, 187–, "Goodyear's Glove Co., Hovey" (marked 73).

A. I recognize that as the signature of Mr. Hovey before mentioned.

100 Q. Another dated June 13, 1872, signed "Goodyear I. R. Glove Co., Hovey" (marked 74).

A. I recognize that.

101 Q. Another dated Aug. 26th, 1872, signed "Goodyear's I. R. Glove M'f'g Co., per G. H. Folsom" (marked 75).

A. I recognize that as Mr. Folsom's writing.

102 Q. Another dated Feb. 24, 1873, signed "Goodyear's I. R. Glove Co., Hovey" (marked 76).

A. I recognize that.

103 Q. Another dated March 24, 1873, signed "Goodyear I. R. Glove Co., Hovey" (marked 77).

A. I recognize that.

104 Q. Another dated Aug. 27, 1873, signed "Goodyear I. R. Glove Co., Hovey" (marked 78).

A. I recognize that.

212 105 Q. Another dated April 13, 1874, signed "Goodyear I. R. Glove Co., Hovey" (marked 79).

A. I recognize that.

106 Q. Another dated July 31, 1874, signed "Goodyear I. R. Glove Co., Hovey" (marked 80).

A. I recognize that.

107 Q. Another dated Feb. 27, 1875, signed "Goodyear's I. R. Glove Co., J. Smith" (marked 81); who was Mr. John Smith?

A. That is the signature of John Smith, one of the clerks.

108 Q. Another dated March 24th, 1875, signed "Goodyear's I. R. Glove Co., J. Smith" (marked 82).

A. I recognize that.

109 Q. Another dated April 15, 1875, signed "Goodyear's I. R. Glove M'f'g Co., E. H. Burr" (marked 83).

A. That is the signature of E. H. Burr, assistant book-keeper.

110 Q. Another dated May 19th, 1875, signed "Goodyear's I. R. Glove Co., per J. Smith" (marked 84).

A. I recognize that.

111 Q. Another dated July 19, 1875, signed "Goodyear's I. R. Glove M'f'g Co., per J. Smith" (marked 85).

A. I recognize that.

112 Q. Another dated Sep. 17th, 1875, signed "Goodyear's I. R. Glove Co., per J. Smith" (marked 86).

A. I recognize that.

113 Q. Another dated Oct. 6, 1875, signed "Goodyear's I. R. Glove M'f'g Co., E. H. Burr" (marked 87).

A. That is the signature of E. H. Burr, assistant book-keeper, before mentioned.

Cross-examination (without waiving objections and notice of motion):

1 X Q. The most of the various names attached to the receipts just shown you are those of office boys, are they not?

A. They were clerks in our employ; we sent different ones out to collect at different times; what work there was to do, if these boys was not busy Mr. Allerton would send them out.

2 X Q. They were boys, were they not?

213 A. Young men; some of them were boys 16, 17, 18 years of age.

3 X Q. Do you know whether they had any authority to abbreviate the title of the company in signing receipts?

A. No; not that I know of.

4 X Q. Did you ever make any examination of the books of receipts from which these exhibit receipts have been selected to see whether there are any other abbreviations than those upon these receipts?

A. I have never seen any of these books until to-day, to my knowledge.

5 X Q. Did you ever make any examination of the correspondence of the defendant company, The Goodyear's India Rubber Glove Manufacturing Company, to discover what proportion of the letters received by them bore abbreviated titles and what abbreviations were most numerous?

A. No; I never did.

6 X Q. What year was it that you were first employed there?

A. I remember now definitely that it was in '61, and desire to amend my former answer.

7 X Q. Are you on friendly terms with Mr. Vermeule, the president of the India Rubber Glove Manufacturing Company?

A. I do not know that I am on any terms with him; I have had no dealings with him whatever since I left the employ of the company.

8 X Q. Mr. Vermeule is now president?

A. Yes, sir.

9 X Q. You have not recognized each other since you came into the room?

A. We have not spoken.

10 X Q. You have not bowed, have you?

A. No; I certainly have not.

Redirect examination:

1 Re-D. Q. You were subpœnaed to appear here, were you not, Mr. Walker?

A. I was, sir.

2 Re-D. Q. You have already been examined in this case, have you not, sir?

A. Yes, sir.

214 Recross-examination:

1 Re-X Q. When you were examined for the defendants you appeared by subpœna?

A. Yes, sir.

ROB'T S. WALKER.

Subscribed and sworn to before me this 8th day of February, 1884.

JOHN A. SHIELDS, *Examiner.*

AUGUSTUS S. GATCHEL, called by complainant, being duly sworn, testified as follows:

1 Q. What is your name, age, and residence?

A. Augustus S. Gatchel; of lawful age; residence, 215 West Fourteenth street, New York city.

2 Q. What is your present business?

A. The rubber business.

3 Q. At what place?

A. 57 Maiden Lane is my headquarters.

4 Q. In the service of what company?

A. No company.

5 Q. How long have you been connected with the rubber trade, Mr. Gatchell?

A. I think since 1853.

6 Q. Actively?

A. Yes, sir; since that time.

7 Q. In this city?

A. Yes, sir.

8 Q. In the various branches of that trade?

A. Yes, sir.

9 Q. How many years have you known the defendant, The Goodyear's India Rubber Glove Manufacturing Company?

A. I think I have known of them since 1849.

10 Q. Have you had business transactions with them?

A. After 1849, about '50, '52, '53, I then had business transactions with them from that up.

11 Q. During that time under what name was that company known to you and to the trade, and what name did it employ in its business?

215 Objected to as incompetent as to the name under which it was known in the trade.

A. India Rubber Glove Company; the Glove Company is what I have always known it by—that is, for a great many years—the Glove Company.

12 Q. Is that the common designation for short in the trade?

Same objection.

A. Well, when the company was mentioned or spoken of it was spoken of just in that way.

13 Q. You have stated that you had a great many business transactions with them; what was the usual form of its signature?

A. Well, it varied; it was the Goodyear Rubber Glove Co., the Goodyear Rubber Glove M'f'g Co.; it varied just the same as those receipts there you have been running over—Glove Co., Goodyear

India Rubber Glove Co., Goodyear India Rubber Glove Manufacturing Company.

Same objection as not the best evidence.

Cross-examination by Mr. BETTS:

1 X Q. In whose employment are you now?

A. No one's.

2 X Q. With whom were you last connected in business?

A. My last connection, a great many years ago, was with Albert G. Lee; I was employed by him.

3 X Q. Your place of business is the same as that of the Rubber Clothing Co.?

A. I am at 57 Maiden Lane, a branch of the Rubber Clothing Co.

4 X Q. How are you there employed?

A. I am not employed by them at all; it is my headquarters; I go there and receive orders for goods, and my friends that want goods come there to see me for them.

5 X Q. What goods do you deal in?

A. Anything that customers want.

216 6 X Q. What is the title of your place of business?

A. Mine is the Goodyear Rubber Emporium; that is the old sign put up a great many years ago.

7 X Q. You buy your goods from the complainant company?

A. I do, sir, if it suits me; if not, I buy them elsewhere.

8 X Q. Have you purchased goods from the defendant, The Goodyear India Rubber Glove Manufacturing Company?

A. Not recently; I have purchased in my day a great many goods from them.

9 X Q. When did you cease purchasing from them?

A. I cannot say that I ever ceased; if there is anything that comes in my line we go there for it; my trade with them virtually ceased some three years ago—four years ago, probably.

10 X Q. Do you not purchase almost all your goods from the complainant company?

A. No, sir.

11 X Q. What proportion do you purchase there?

A. I cannot answer you what proportion; I purchase from them when it suits my convenience and prices; if not, I purchase elsewhere.

12 X Q. Is your place of business at 57 Maiden Lane in the same store as the complainant company?

A. They give me a place to set my desk in the rear of the store, out of the way of everything, where it is no inconvenience to them.

13 X Q. How much do you pay for it per annum?

A. They give me the privilege of setting my desk there, sir.

14 X Q. You pay nothing, then?

A. I pay nothing.

15 X Q. Have you receipts for goods purchased from the defendant, The Goodyear India Rubber Glove Manufacturing Company?

A. Yes, sir.

16 X Q. Can you produce a single receipt in which they sign by an abbreviated title the Goodyear Glove Company?

A. Yes, I think so.

217 17 X Q. Please do so.

A. I will have to go to the store and get my receipt book.

A. S. GATCHEL.

Subscribed and sworn to before me this 8th day of Feb., 1884.

JOHN A. SHIELDS, *Examiner.*

Mr. BETTS: The defendant calls for all receipts, letters, and billheads in the possession of the witness signed by the Goodyear's India Rubber Glove Manufacturing Company under any title.

F. M. SHEPARD, called by complainant, being duly sworn, testified as follows:

1 Q. Mr. Shepard, five receipt books have been exhibited to the witness, Mr. Walker, for the purpose of calling his attention to the signature to the different receipts given in behalf of the defendant, numbered from 1 to 5 inclusive; whose and what books are those?

A. They are the receipt books used in the regular course of business for payments of money to various parties, and, so far as I know, they contain all the receipts which we had from the Goodyear's India Rubber Glove Manufacturing Company during the years covered by the books.

2 Q. What years are covered by those books?

A. They begin with the year 1858 and go on to 1875.

Adjourned to Saturday, Feb. 2, 9.45 a. m.

218 SATURDAY, *February* 2—9.45 a. m., at 61 Wall St.

Met pursuant to adjournment.

EDWARD H. VAN INGEN, called by complainants, being duly sworn, testified as follows:

1 Q. What is your name, residence, age, and occupation?

A. Edward H. Van Ingen; residence, 122 Remsen street, Brooklyn; of lawful age; occupation, merchant.

2 Q. Where is your present place of business?

A. 490 Broadway.

3 Q. The same premises formerly occupied by Goodyear's India Rubber Glove Company?

A. The company formerly occupied part of the premises now occupied by me.

4 Q. I read you a paragraph from the answer of Goodyear's India Rubber Glove Manufacturing Company in this case:

"And these defendants further show that on or about the first day of January, 1882, said defendant corporation was, against its wish, prevented from renewing the lease of its said premises on the corner of Broome street and Broadway, and said premises were rented, not-

withstanding its request to the contrary, to other parties, and said defendant corporation was compelled to move its place of business from the corner of Broome street and Broadway to Nos. 503 and 505 Broadway.

"That, as these defendants are informed and believe, said defendant corporation was compelled to change its location of business by and at the instance of the plaintiff." (Folios 51, 52.)

State, if you please, the facts connected with your succeeding to the occupation of the premises formerly occupied by the defendant company?

219 A. I had been a tenant occupying the upper portions of the building for over ten years; it became necessary for us to have more room; we exceedingly disliked to take the lower portion of the building because we thought the rent too high; for six months we endeavored to obtain additional premises, either adjoining on Broadway or Broome street, and it finally became a simple question whether we should move or take the lower portion of the building; under these circumstances we made a proposition to hire the lower portion of the building, which was accepted, and we took possession.

5 Q. So far as you know, had the Goodyear Rubber Company, the complainant in this case, or anybody connected with that company, anything to do with the changes you have just mentioned?

Objected to as incompetent.

A. Not the slightest; I may add I never heard of the company in my life until long after that took place; never saw anybody connected with the company.

E. H. VAN INGEN.

Subscribed and sworn to before me this 8th day of February, 1884.
JOHN A. SHIELDS, *Examiner.*

Adjourned to Monday, February 4, 1883—9.45 a. m.

61 WALL ST., MONDAY, *Feb.* 4, 1884—9.45 a. m.

Met pursuant to adjournment.

Cross-examination of AUGUSTUS S. GATCHELL continued:

220 In pursuance of the call of the defendants' counsel the witness now produces receipt book belonging to him and used in his business, embracing the period between 1864 and 1874.

1 X Q. This receipt book produced by you contains only receipts of money and checks, does it not?

A. Yes, sir; the receipts show.

2 X Q. And it is of the same character as the receipt books produced by the Rubber Clothing Company at the last meeting?

A. All receipt books are of the same character; I presume it is the same as theirs.

3 X Q. Have you produced anything else besides this book in answer to the call?

A. I have not.

4 X Q. Why not?

A. The simple reason is I have nothing I can lay my hands on; in the course of a few years my old bills, &c., have been mislaid or destroyed; I have receipts for everything I have paid, but from one cause or another, and when I moved from Courtlandt street, my old bills have all been destroyed—put in the stove.

5 X Q. Have you looked for any of the other matters called for since the last meeting?

A. Yes, sir; I have looked over; I have nothing at all that I can lay my hands on.

6 X Q. What do you mean by saying you have nothing that you can lay your hands on?

A. I have nothing of the kind; I mean that.

7 X Q. You have no papers whatever?

A. No, sir.

8 X Q. When did you last destroy these papers?

A. In April of 1882.

9 X Q. Have you any sign up over your present place of business?

A. No, sir.

10 X Q. Why did you say when I asked you at your last examination that you had the sign "Rubber Emporium?"

A. I did not say I had that sign; I said that was the title of my business—the Goodyear Rubber Emporium; my bill-heads are worded in the same way.

221 Redirect examination:

1 Re-D. Q. Did you have any business connection with the parties to this suit—I mean any business association with the plaintiffs in the suit?

A. No business association whatever.

2 Re-D. Q. From 1853 for some years on you had a store of your own, I believe?

A. From 1853 I was at 159 Broadway, then 167 Broadway; from there I went into Courtlandt street.

3 Re-D. Q. Is the receipt book which I hand you a receipt book of your own, used in your business?

A. Yes, sir.

4 Re-D. Q. What period of time does it embrace?

A. From '64 to '74.

5 Re-D. Q. And does it contain the receipts of the Goodyear's India Rubber Glove Manufacturing Company?

A. Yes, sir.

Objected to as not competent, there being no proof that the company authorized the signatures, and that the names appended to such signatures appear to be those of office boys, as testified to at the last hearing. Motion will be made to strike out the answers.

6 Re-D. Q. Do the receipts given by that company relate to the current business transactions which you had during this period with that company?

A. Yes, sir.

7 Re-D. Q. Have any of those receipts ever been the subject of question or controversy between yourself and the company?

A. No controversy that I am aware of.

8 Re-D. Q. No question has ever arisen as to the authenticity of any of them?

A. None.

9 Re-D. Q. Nor as to the power of the persons signing them to sign them?

A. None. Allow me to say that a good many of them are signed by the Allertons themselves.

Mr. MacFarland: The complainant offers in evidence
222 receipts contained in the receipt book referred to by the witness, now marked in blue pencil by numbers, beginning with No. 88, and described as follows:

Objection on ground that they are immaterial.

A receipt dated Jan. 3, 1865, signed Geo. M. Allerton, treas. Goodyear's I. R. Glove M'f'g Co., marked in blue pencil 88.

A receipt dated Feb. 1, 1865, signed G. I. R. Glove M'f'g Co., by E. W. Bullenger, marked 89.

A receipt dated April 1st, 1865, signed G. I. R. Glove M'f'g Co., by E. W. Bullenger, marked 90.

A receipt dated May 1st, 1865, signed G. I. R. Glove M'f'g Co., by E. W. Bullenger, marked 91.

A receipt dated June 2, 1865, signed G. I. R. Glove M'f'g Co., by E. W. Bullenger, marked 92.

A receipt dated Sept. 4, 1865, signed Goodyear's I. R. Glove M'f'g Co., per R. G. Allerton, marked 93.

A receipt dated Sept. 5, 1865, signed Goodyear's I. R. Glove M'f'g Co., per R. G. Allerton, marked 94.

A receipt dated Oct. 2, '65, signed G. I. R. Glove M'f'g Co., by E. W. Bullenger, marked 95.

A receipt dated Nov. 2, 1865, signed Goodyear I. R. Glove Co., per R. G. Allerton, marked 96.

A receipt dated Dec. 1, 1865, signed Goodyear I. R. Glove Co., per R. G. Allerton, marked 97.

A receipt dated Jan. 2, '66, signed G. I. R. Glove M'f'g Co., by E. W. Bullenger, marked 98.

A receipt dated Feb. 1, '66, signed Goodyear's I. R. Glove M'f'g Co., per Rob't S. Walker, sec'y, marked 99.

A receipt dated March 1, 1866, signed Goodyear I. R. Glove M'f'g Co., R. Brumell Smith, marked 100.

A receipt dated April 3, '66, signed Goodyear's Glove Co., per R. G. Allerton, marked 101.

A receipt dated May 7, '66, signed Goodyear's I. R. Glove M'f'g Co., R. Brumell Smith, marked 102.

223 A receipt dated June 4, 1866, signed Goodyear's Glove Co., per R. G. Allerton, marked 103.

A receipt dated June 30, 1866, signed Goodyear's I. R. Glove M'f'g Co., R. Brumell Smith, marked 104.

A receipt dated Sept. 12, 1866, signed Goodyear's I. R. G. M'g Co., per I. W. Turner, marked 105.

A receipt dated Oct. 2, '66, signed Goodyear's I. R. G. M'f'g Co., I W. Turner, marked 106.

A receipt dated Dec. 3, '66, signed Goodyear's I. R. G. M'f'g Co., per J. B. Sweet, marked 107.

A receipt dated Jan. 2, 1866, signed Goodyear's I. R. G. M'f'g Co., per J. B. Sweet, marked 108.

A receipt dated Feb. 2, '67, signed Goodyear's I. R. G. M'f'g Co., per I. W. Turner, marked 109.

A receipt dated March 6, 1867, signed Goodyear's I. R. G. M'f'g Co., J. W. Turner, marked 110.

A receipt dated May 2, '67, signed Goodyear's I. R. G. M'g Co., J. B. Sweet, marked 111.

A receipt dated June 3, '67, signed Goodyear's Glove Co., per J. W. Turner, marked 112.

A receipt dated July 2, '67, signed Goodyear's Glove Co., per Sweet, marked 113.

A receipt dated Oct. 5, '67, signed Goodyear's Glove Co., per Sweet, marked 114.

A receipt dated Nov. 2, 1867, signed Goodyear's I. R. Glove M'f'g C., R. G. Allerton, treas., marked 115.

A receipt dated Jan. 3, 1868, signed Goodyear's I. R. Glove M'f'g Co., R. G. Allerton, treas., marked 116.

A receipt dated Ap'l 11, 1868, signed Goodyear's Glove Co., per J. W. Turner, marked 117.

A receipt dated May 4, 1868, signed Goodyear's Glove Co., per J. W. Turner, marked 118.

A receipt dated June 1, 1868, signed Goodyear's I. R. Glove Co., H., marked 119.

A receipt dated July 6, '68, signed Goodyear Glove Co., Folsom, marked 120.

224 A receipt dated Aug. 4, '68, signed Goodyear's Glove Co., Folsom, marked 121.

A receipt dated Sept. 2, '68, signed Goodyear's I. R. Glove M'f'g Co., R. G. Allerton, treas., 122.

A receipt dated Oct. 2, 1868, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 123.

A receipt dated Nov. 5, '68, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 124.

A receipt dated Dec. 2, '68, signed Goodyear's Glove Co., per A. P. L., marked 125.

A receipt dated Jan. 6, 1869, signed Goodyear India R. Glove Co., per P. Hunting, marked 126.

A receipt dated Feb. 8, '69, signed Goodyear Glove Co., per A. P. L., marked 127.

A receipt dated March 9, 1869, signed Goodyear's Glove Co., R. G. Allerton, treas., marked 128.

A receipt dated Ap'l 7, '69, signed Goodyear's I. R. Glove Co., Folsom, marked 129.

A receipt dated May 8, '69, signed Goodyear's I. R. Glove Co., Folsom, marked 130.

A receipt dated June 7, 1869, signed Goodyear's Glove Co., per Andrew B. Travis, marked 131.

A receipt dated July 1, '69, signed Goodyear's I. R. Glove Co., Folsom, marked 132.

A receipt dated Aug. 16, '69, signed Goodyear's Glove Co., per A. P. L., marked 133.

A receipt dated Sept. 13, '69, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 134.

A receipt dated Oct. 4, 1869, signed Goodyear's Glove Co., per A. P. L., marked 135.

A receipt dated Nov. 11, '69, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 136.

A receipt dated Dec. 14, '69, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 137.

A receipt dated Jan. 15, '70, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 138.

A receipt dated Feb. 15, 1870, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 139.

225 A receipt dated Ap'l 1, '70, signed Goodyear's Glove Co., per A. P. L., marked 140.

A receipt dated Ap'l 15, '70, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 141.

A receipt dated May 16, '70, signed Goodyear's Glove Co., per A. P. L., marked 142.

A receipt dated June 14, '70, signed Goodyear's Glove Co., per A. P. L., marked 143.

A receipt dated July 15, '70, signed Goodyear's I. R. Glove M'f'g Co, Folsom, marked 144.

A receipt dated Aug. 19, '70, signed Goodyear's Glove Co., A. P. L., marked 145.

A receipt dated Sept. 15, '70, signed Goodyear's Glove Co., A. P. L., marked 146.

A receipt dated Oct. 15, '70, signed Goodyear's Glove Co., A. P. L., marked 147.

A receipt dated Nov. 15, '70, signed Goodyear's Glove Co., A. P. L., marked 148.

A receipt dated Dec. 15, '70, signed Goodyear's I. R. Glove M'f'g Co'y, A. P. L., marked 149.

A receipt dated Jan. 16, '71, signed Goodyear's I. R. Glove M'f'g Co., A. P. L., marked 150.

A receipt dated Feb. 16, '71, signed Goodyear's I. R. G. M'f'g Co., A. P. L., marked 151.

A receipt dated March 15, '71, signed Goodyear's I. R. Glove M'f'g Co., A. P. L., marked 152.

A receipt dated April 17, '71, signed Goodyear's Glove Co., A. P. L., marked 153.

A receipt dated May 16, '71, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 154.

A receipt dated June 15, '71, signed Goodyear's Glove Co., A. P. L., marked 155.

A receipt dated July 17, '71, signed Goodyear's I. R. Glove M'f'g Co , Folsom, marked 156.

A receipt dated Sept. 6, '71, signed Goodyear's Glove Co., A. P. L., marked 157.

A receipt dated Sept. 21, 1871, signed Goodyear's Glove Co., A. P. L., marked 158.

226 A receipt dated Oct. 16, '71, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 159.

A receipt dated Nov. 16, '71, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 160.

A receipt dated Dec. 15, '71, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 161.

A receipt dated Jan. 15, '72, signed Goodyear's Glove Co., A. P. L., marked 162.

A receipt dated Feb. 15, '72, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 163.

A receipt dated March 14, '72, signed Goodyear's I. R. G. M'f'g Co., A. P. L., marked 164.

A receipt dated May 15, '72, signed Goodyear's I. R. G. M'f'g Co., A. P. L., marked 165.

A receipt dated June 24, '72, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 166.

A receipt dated July 26, 1872, signed Goodyear's I. R. Glove M'f'g Co., Folsom, marked 167.

A receipt dated Sept. 4, '72, signed Goodyear's I. R. Glove Co., Hovey, marked 168.

A receipt dated Oct. 15, '72, signed Goodyear's I. R. Glove M'f'g Co., A. P. L., marked 169.

A receipt dated Nov. 27, '72, signed Goodyear's I. R. Glove M'f'g Co., A. P. L., marked 170.

A receipt dated Jan. 20, '72, signed Goodyear's Glove Co., A. P. L., marked 171.

A receipt dated Feb. 19, '73, signed Leaycraft, for Co., marked 172.

A receipt dated March 25, '73, signed Goodyear's Glove Co., A. P. L., marked 173.

A receipt dated June 26, '73, signed Goodyear's Glove Co., A. P. L., marked 174.

A receipt dated July 29, 1873, signed Goodyear's I. R. Glove M'f'g Co., Van, marked 175.

A receipt dated Oct. 22, '73, signed Goodyear's I. R. Glove Co., A. P. L., marked 176.

A receipt dated Dec. 31, '73, signed Goodyear's I. R. Glove M'f'g Co., A. P. L., marked 177.

227 A receipt dated Jan. 31, 1874, signed Goodyear's I. R. Glove M'f'g Co., Van, marked 178.

A receipt dated April 23, '74, signed Goodyear's I. R. Glove Co., Hovey, marked 179.

A receipt dated July 15, '74, signed Goodyear's I. R. Glove M'f'g Co., Van, marked 180.

A receipt dated Sep. 30, 1874, signed Goodyear's I. R. Glove M'f'g Co., Van, marked 181.

A receipt dated Oct. 31, '74, signed Goodyear's I. R. Glove M'f'g Co., Leaycraft, marked 182.

10 Re-D. Q. You have examined the receipts contained in this receipt book since you were requested to produce it?

A. I have.

11 Re-D. Q. And you have marked them?

A. I have.

12 Re-D. Q. You identify them as being the receipts given to you by the India Rubber Glove Manufacturing Company?

A. I do, sir.

Recross-examination:

1 Re-X Q. How long have you had a desk in the place of business of the complainant company in the manner you have testified?

A. I think, sir, since May, 1882.

2 Re-X Q. Is the receipt book which you have produced the only receipt book in your possession?

A. I think it is the only book that has any receipt of the glove company.

3 Re-X Q. Then since '74, the date of the last receipt in this book, you have ceased to purchase from them?

A. No, sir; I have not.

4 Re-X Q. Then you have other books with receipts in them?

A. I have purchased from them and paid for it as I got it, what little things I needed in my buisness, without bills or receipts or anything of the kind—simply purchased and paid for what little things I needed in my business; that ended the transaction. If you will allow me to state, in '82 I had a very sick family—a sick
228 wife—and I devoted the entire year by her bedside until her death, and I was out of business for a year; my desk was there through the kindness of Mr. Studley; he allowed me to set my desk there, and there it remained for a year.

5 Re-X Q. From '74 to '82 what was your business?

A. Rubber business.

6 Re-X Q. How did it happen that you had no receipt book from that time on to '82—those eight years?

A. I had receipt books early in my business transactions; those, with the papers and everything, I cleared out as of no earthly use. I had no room to store them, no way to take care of them, and they were all swept away in one way or another—destroyed.

7 Re-X Q. Why did you preserve this one that you have produced?

A. Because there was a convenient place to store it away in my safe and take care of it; it was necessary to have a receipt book.

8 Re-X Q. Why were not the receipts from '74 to '82 as valuable as these?

A. I do not know. I did not place any more value on this or this than I did on the others; as it is, those books are all gone; swept away with rubbish and stuff of the store or made away with in some way or other. I sent a great many books to Ann street—old order books and receipt books and papers and things—and sold them there as old stuff.

9 Re-X Q. This one that you have produced has been sufficiently valuable to keep in your safe ever since?

A. Yes, sir.

Redirect examination:

13 Re-D. Q. You took no special care to preserve your old receipt books?

A. No, sir; I did not.

Q. But this book you happened to find?

A. I had no idea when I was called upon I could even
229 produce this, but I found it put away in the safe and I produced it.

A. S. GATCHEL.

Subscribed and sworn to before me this 8th day of Feb., 1884.

JOHN A. SHIELDS, *Examiner.*

Direct examination of F. M. SHEPARD continued:

1 Q. Did the letter from Judge Kellogg and the account put in evidence in connection with it the other day refer to the factory at Naugatuck?

A. It did.

2 Q. I hand it to you now, marked "Complainant's Exhibit, Feb. 1, '84, No. 28," consisting of a letter with the bill annexed, and I ask you what they relate to?

A. It is a bill for repairs to the rubber factory at Naugatuck, Conn., which was hired for the purpose of making goods for the complainant, The Goodyear Rubber Co.

2½ Q. The letter is from Judge Kellogg, and the bill is certified to by him as correct?

A. He was employed by the parties to adjust it—by myself on one side and the person who made the bill and who did the work on the other.

3 Q. Is the paper which I now hand you a memorandum of the lease of that factory?

A. Yes, sir; it is a memorandum lease—the only lease which was executed.

4 Q. What was or should be the date of it?

A. August 4, 1876.

5 Q. To continue how long?

A. Five years.

6 Q. Did it continue so long?

A. It continued for a little more than four years and then was surrendered by myself and the parties I represent that the property might be sold to the Goodyear's India Rubber Glove Manufacturing Company.

230 Mr. McFARLAND: The lease is offered in evidence and marked "Complainant's Exhibit, Feb. 4, 1884, No. 29."

Objected to as incompetent and immaterial and not the best evidence, being merely a copy and apparently a portion of the document only.

7 Q. Mr. Shepard, is the document a copy of the original?
A. Yes, sir.
8 Q. Where is the original?
A. I have been unable to find it.
9 Q. Have you made diligent search for it?
A. Yes, sir.
10 Q. In every place where there is any likelihood of its being?
A. Yes, sir.
11 Q. Are you able to swear that the copy is a true copy?
A. Yes, sir.
12 Q. Was Mr. George M. Allerton, the president of the Goodyear's India Rubber Glove Manufacturing Company, at any time your agent for the purpose of looking after those Naugatuck factories?
A. He was employed by me as my agent to take care of that property during the whole time that I had possession of it.
13 Q. I hand you eight letters and ask you to examine them and state whether they are letters from Mr. Allerton, written to him by yourself in the course of that agency?
A. They are letters written by Mr. Allerton to me regarding the care of the property and what was necessary to be done under certain circumstances.

Complainant offers them in evidence and marks them in red ink with this date, Feb. 4, 1884, and "Complainant's Exhibit No. 30," and so on to "No. 37," inclusive.
Objected to as immaterial.

The witness says: I ought to add in regard to the employment of Mr. Allerton that I paid him for his services by allowing a man who worked in the glove company's factory to live in the fac-
231 tory that I leased, and also by allowing the glove company to occupy a considerable portion of that factory for the storage of their raw materials and goods belonging to them, as they might find it convenient.

Recross-examination:

1 Re-X Q. How do you know that the document which you have offered in evidence as a copy of the lease of that factory is a true copy?
A. Because I compared it with the original; the copy was made some years ago, about the time of the execution of it, for the pur-

pose of drawing out a more formal lease between myself and Mr. Warren Ackerman, the owner of the factory; no such further document was ever executed.

2 Re-X Q. Did you ever make any assignment of that lease?

A. No, sir; I never did, except, I think, a release in the spring of '81, at the time the property was sold to the glove company; I might have executed a receipt or release at that time.

3 Re-X Q. With the exception of the paper you have produced there was no other paper or agreement of any kind, either in writing or verbal, ever made by you?

A. Relating to the factory, none.

4 Re-X Q. Then the Rubber Clothing Company and the complainant company had no interest in that factory; it was yours personally?

A. Yes, sir; they paid the bills, all the cost of taking care of it and all the repairs to the property.

Objected to as not responsive.

5 Re-X Q. They never had any interest in that lease?

A. It was made for their benefit.

Same objection to the answer, and motion to strike it out.

6 Re-X Q. Was anything ever done with that factory during the time of your lease except to allow the defendant to use it as a storeroom?

A. Nothing was done.

7 Re-X Q. Never manufactured any goods there?

A. No, sir; it was found that the cost of putting it in running order would be too great to justify it.

232 8 Re-X Q. What did you pay a year for it?

A. I agreed to pay $5,500 a year, and did substantially pay that sum; I was entitled to the benefit of a certain agreement relating to it by the shoe companies by which they agreed to pay $5,000 per year if the factory was not employed in making rubber boots and shoes.

9 Re-X Q. It was somewhat uncertain at the beginning whether that payment would be made by them?

A. I took the risk of that; they did pay me some part of it—some considerable part of it—because the factory was kept from making boots and shoes, but the difference between the sum mentioned in these leases and what they did pay was paid from time to time by me to Mr. Ackerman, and I have his receipts, some of them, here?

10 Re-X Q. How much did you actually pay per annum?

A. I paid $500 per annum and the cost of these repairs, of which this bill that I present is one—this bill amounting to $661.55; other bills I have not preserved or do not find.

11 Re-X Q. What did the other bills amount to?

A. Well, I am unable to say, sir.

12 Re-X Q. Very small, were they not?

A. There were several; I have no definite recollection of the total amount or amounts of any of them.

Re-X Q. They were small, were they not?

A. They were smaller than this; I think this was the largest one I remember paying.

Re-X Q. About how much were the others?

A. It is mere guess-work, sir; I am unable to say; they were not so large as this bill, none of them, that I remember.

Re-X Q. Give your best recollection.

A. I should think, perhaps, I paid $500 more altogether.

Re-X Q. For them all?

A. Yes, sir; I should think so.

R-X Q. Exclusive of this?

A. Yes, sir.

233 Re-X Q. Besides the leasing of this factory in your own name from the Star Rubber Co. and the sub-letting of it to the defendant for the storage of their goods, there was no authority for the statement on the signs of the complainant company nor any reason for the statement so conspicuously printed that they had factories in Naugatuck, Conn., were there?

A. When this lease was made it was intended to commence making goods there at once by the Goodyear Rubber Co. and by the Rubber Clothing Co. The factory was held for the purpose of doing that. It was never sub-let for any time to the glove company or to Mr. Allerton or to any person. His occupation and use of it was understood to be temporary—to be given up on a few days' notice at any time. There was no document ever written concerning it between himself and me, and at the time the signs were printed it was supposed that goods would be made there very soon.

Re-X Q. Did you understand the last question I put to you? Now, will you please answer the question I just propounded to you, yes or no?

(Question repeated.)

A. The answer I have given is the foundation of the statement made on the signs.

Re-X Q. How much did the defendant company pay for the privilege of storing goods in that factory?

A. Merely Mr. Allerton's services in looking after it.

Re-X Q. How much was it?

A. No money value was ever placed upon them.

Re-X Q. Then when you stated that you paid Mr. Allerton for his services you meant that you paid him in cancelling the obligation to pay the lease?

A. I should have said, perhaps, rewarded him, or words of that sort. There was no money payment or any sum in money fixed between Mr. Allerton and myself in regard to his services for me. It was a convenience to him and his company. That was understood to be the compensation.

234 Re-X Q. When was the agreement made with Mr. Allerton?

A. Very shortly after the lease was made; I think probably in the latter part of the year 1876.

23 Re-X Q. How long did the storage of goods by the defend continue there?

A. So far as I know, as long as I held possession of it.

F. M. SHEPARD.

Subscribed and sworn to before me this 8th day of February, 1884.

JOHN A. SHIELDS, *Examiner.*

61 WALL STREET,
SATURDAY, *Feb.* 23, 1884—11 a. m.

Met pursuant to adjournment.
Present: Same counsel.

Redirect examination of A. S. GATCHEL continued:

14 Re-D. Q. Look at the paper which I give you and say whether it is a specimen of the bill-heads used by you when you were in active business.

A. Yes, sir.

15 Re-D. Q. And is still used by you?

A. I have brought with me one of the bill-heads such as I use to-day. It has always been in that form.

Offered in evidence and marked Exhibit No. 38, Feb. 23d, 1884.

Recross-examination continued:

10 Re-X Q. Did you use that sign, "Goodyear's Rubber Emporium," upon the place where you carried on business?

A. Yes, sir; I can produce it now. It is one of the best-preserved signs in the city of New York. It is forty years old, and I guess it is in perfect shape.

235 11 Re-X. Q. Where is it?

A. It is stored.

12 Re-X. Q. Where was it placed?

A. Over my place of business always.

13 Re-X Q. Describe the position of it, please.

A. Directly over the door—the entrance to the place of business, 167 and 159 Broadway.

14 Re-X. Q. On the street or inside?

A. It was over the front door, the entrance to the business.

15 Re-X. Q. Was it on the street or inside?

A. It was over the entrance to the store; 167 and 159, I think, were the numbers on the front of the building.

16 Re-X. Q. Was it out in the street?

A. It was over my front door, the entrance to the store.

17 Re-X. Q. I would like to have the question answered directly, whether it was inside the building or in the street.

A. It was not inside; it was outside, over the door.

A. S. GATCHEL.

Sworn to before me this 29th day of February, 1884.

JOHN A. SHIELDS, *Examiner.*

GEORGE F. HODGMAN, called by complainant, being duly sworn, testified as follows:

1 Q. Where do you reside?

A. New York city.

2 Q. Have you at any time been engaged in dealing in rubber goods?

A. Yes, sir.

3 Q. State when and where and under what name.

A. Have been in the rubber business about twenty years in New York city, most of the time corner Maiden Lane and Nassau street—a year at Broadway and Grand street.

4 Q. Your father was also in the rubber business?

A. Yes, sir.

5 Q. During what time?

A. Before his decease, about forty years.

236 6 Q. From what time to what time?

A. From about 1837 or '8 up to the time of his death, in 1875.

7 Q. Did he deal in rubber goods generally?

A. Yes, sir; manufacturer and dealer.

8 Q. In the various kinds of rubber goods then manufactured and sold?

A. Yes, sir.

9 Q. Under what name or style did he carry on business?

A. D. Hodgman, in New York city, and his factory was under the name of the Goodyear Rubber Works—that is, part of the time.

10 Q. Did he employ printed bill-heads and letter-heads in his business?

A. Yes, sir.

11 Q. And with that name printed on them?

Objected to as not the best evidence.

A. Yes, sir; with the name of the Goodyear Rubber Works on them.

12 Q. I believe you said you were with your father in his business?

A. I was with my father until 1869 or '70, I think, as a clerk with him.

13 Q. You were with him how long?

A. About 8 or 10 years, I should judge.

14 Q. From 1869 and afterwards?

A. I was a clerk with him since I was a boy about 18 years old up to 1869 or '70, I think it was; I think it was about eight years as clerk.

15 Q. What did you do after that?

A. After that I retired from business for a year; then came back with him and formed a partnership with him under the name of D. Hodgman & Co.; that is the name we gave to our store and the firm.

16 Q. Did your factories continue to bear the same name, Goodyear's Rubber Works?

A. Yes, sir.

17 Q. Was there another firm, A. D. & C. A. Hodgman?

A. Yes, sir.

18 Q. What firm was that?

A. A firm composed of two of my brothers.

19 Q. What time was that organized?

237 A. I do not know exactly when; somewhere about '69, I should think.

20 Q. What was the business of the firm?

A. India-rubber business.

21 Q. Did you have any connection with that firm?

A. Not at that time.

22 Q. Did you subsequently become connected with it?

A. Not with that firm.

23 Q. Is that firm still in business?

A. No, sir; they went into bankruptcy.

24 Q. How long did they remain in business?

A. They remained in business, I think, two years.

25 Q. General dealers in rubber goods?

A. Yes, sir.

26 Q. Did they employ in any manner the name of Goodyear's Rubber Company?

Objected to as leading.

A. If you will allow me, I will give you an explanation of how that happened, so that you will know.

27 Q. Do so, if you please.

A. In about 1869 A. D. & C. A. Hodgman were clerks with me and with my father on the corner of Maiden Lane and Nassau street; they formed a partnership themselves as A. D. & C. A. Hodgman, and took a store in Broadway—No. 201; with that they had a factory at Tuckahoe, New York, under the name of the Goodyear Rubber Works at that time; it is the Standard Rubber Works now; was then the Goodyear Rubber Works. I remained at the store corner Maiden Lane and Nassau street for a year or so, and in the course of two years the firm of A. D. & C. A. Hodgman went into bankruptcy and they afterwards returned to the corner of Maiden Lane and Nassau street; when they came back there I retired from business; during all that time they used the factory under the style of the Goodyear Rubber Works. In 1872 I formed a partnership with my father; then I took what business there was at the corner

238 of Maiden Lane and Nassau street, still retaining the factory with this name until 1877, when we changed the name of our factory from the Goodyear Rubber Works to the Standard Rubbur Works. I think that tells the whole story so far as I can give it.

28 Q. Are the four bill-heads which I now hand you the bill-heads of A. D. & C. A. Hodgman & Co., the firm to which you refer?

A. Yes, sir.

Produced in evidence and marked Complainant's Exhibits 39, 40, 41, and 42.

29 Q. Are the two cards which I now had you correct specimens of the trade cards used by that same firm and circulated by them among the trade?

A. Yes, sir.

Produced and marked Complainant's Exhibits 43 and 44.

30 Q. Is the letter which I now show you, with a printed heading, a letter of the firm of A. D. & C. A. Hodgman?

A. Yes, sir.

Produced and marked Complainant's Exhibit 45.

31 Q. And does the printed heading represent the style of heading in use by the firm?

A. Yes; signed by Mr. A. D. Hodgman.

32 Q. You have no business connection with either of the parties to this action?

A. No, except buying and selling from them; that is all.

33 Q. You are still in the rubber business?

A. Oh, yes, sir.

34 Q. What is the name of your present firm?

A. Hodgman & Co.

35 Q. During the whole period that you have been connected with the rubber business and with the firms that you have mentioned have there been mutual business dealings between yourself and your firms and the Goodyear India Rubber Glove Co.?

A. Yes, sir.

239 36 Q. Are you able to state by what name that company was generally known to the rubber trade and those engaged in it?

Objected to as incompetent, except as to the witness' own knowledge.

WITNESS: At present or previous; what time do you have reference to?

Mr. MACFARLAND: During the whole period covered by your connection with the rubber business.

A. When I first went into the rubber business it was the Goodyear India Rubber Glove, I think, Manufacturing *or* Company; we always called it the Goodyear Glove Co., and it has always been known so to me since I was a boy to within several years past.

37 Q. When you use the expression we whom do you mean besides yourself?

Same objection.

A. The firm and my employees.

38 Q. Are you able to state, from your own knowledge of the business, whether or not that was the name by which it was generally known in the business community—the Glove Co.?

Same objection.

A. By my knowledge of it it was generally known as the Goodyear Glove Co.

Cross-examination:

1 X Q. Are you aware that the defendant company, The Goodyear's India Rubber Glove Manufacturing Company, was often called by people dealing in rubber goods by the titles Goodyear Rubber Co., Goodyear Rubber Manufacturing Co., Goodyear & Co., and other abbreviated titles?

A. It has always been spoken of among those in the same trade with myself and others as the Goodyear Glove Co.; it is the title which I have always called them by and always my competitors in the same line of business.

Answer objected to as not responsive.

2 X Q. Are you not aware that, in addition to that title, the
240 company was frequently addressed by letter and called in conversation the Goodyear Company or the Goodyear Rubber Co.?

A. I have never heard of it.

3 X Q. Or the Goodyear Rubber Manufacturing Co.?

A. I have never heard of it.

4 X Q. What sort of rubber goods did your firm deal in?

A. A variety of rubber goods, such as clothing and sheetings; and some druggists' goods, such as air-work, water bottles, and things of that kind; we make a great variety of goods.

5 X Q. What is your principal business?

A. A large part of our business is clothing—rubber clothing.

6 X Q. What was your principal business prior to 1873?

A. It was rubber clothing—overcoats and things of that description.

7 X Q. What sign was over the door of the place of business of A. D. & C. A. Hodgman?

A. I do not remember.

8 X Q. What sign was there over the place of business while you were connected with it in New York?

A. The signs of D. Hodgman, D. Hodgman & Co., and, on the glass of the show-window, Goodyear Rubber Works.

9 X Q. When was that sign put on—Goodyear Rubber Works—on the show-window?

A. I do not know when it was put on—the time; I know it has been there a great many years.

Mr. MacFarland: The complainant company offers in evidence a document labeled, Certified copy of petition and judge's minutes in vacation. The Goodyear India Rubber Glove Manufacturing Co. *et al. vs.* Edwin B. Moore and George B. Thompson. State of Missouri and county of St. Louis. In the circuit court of St. Louis county, now marked Complainant's Exhibit No. 46.

GEO. F. HODGMAN.

Sworn to before me this 29th day of February, 1882.

JOHN A. SHIELDS, *Examiner.*

Complainant's evidence closed.

COMPLAINANT'S EXHIBIT No. 28. Feb. 1, 1884.

S. W. Kellogg, Geo. E. Terry.

Kellogg & Terry, attorneys and counselors at law, 74 Bank street.

WATERBURY, CONN., *Oct.* 21, 1878.

F. M. Shepard, Esq., pres. Rubber Clothing Co.

MY DEAR SIR: Yours enclosing check of $661\frac{55}{100}$ dollars, in full settlement of claim of Tuttle M'f'g Co. against Star Rubber Co., was duly received, and I will see that the claim is discharged and settled in full.

Very truly yours, S. W. KELLOGG.

NAUGATUCK, CONN., *Aug.* 27, 1878.

M The Star Rubber Co.:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| To cash paid for work on dam, ditch, and arch | | | | | | | $608 75 |
| " " M. M. Whitney, | 32 days | 7 hours, | | | $3 | $98 | 10 |
| " " E. L. Judd, | 12 " | 6 " | | | 2.75 | 34 | 65 |
| C. Whipple, | 3 " | 3 " | | | 2.00 | 6 | 60 |
| W. French, | 9 " | 1 " | | | 1.25 | 11 | 38 |
| T. Boylan, | 38 " | 6 " | | | 1.25 | 48 | 25 |
| T. Walsh, | 15 " | | | | 1.25 | 18 | 75 |
| P. Burgess, | 7 " | 8 " | | | 1.50 | 11 | 70 |
| R. Buck, | 39 " | 9 " | | | 1.50 | 59 | 85 |
| D. Powers and team, | 6 " | | | | 4.00 | 24 | 00 |
| J. Horn, | | 5 " | | | 1.60 | | 80 |
| Geo. Shumway, | 2 " | | | | 1.25 | 2 | 50 |
| S. McCarthy, | 12 " | 8 " | | | 1.25 | 16 | 00 |
| Alex. " | 1 " | | | | | 1 | 25 |
| W. Frain, | 14 " | 6 " | | | 1.50 | 21 | 90 |
| C. W. Hadley, | 12 " | 6 " | | | 1.50 | 18 | 90 |
| P. Morgan, | 6 " | 8 " | | | 1.50 | 10 | 20 |
| J. P. Burk, | 7 " | 1 " | | | 1.60 | 11 | 36 |
| Jas. Dyer, | | 8 " | | | 1.50 | 1 | 20 |
| A. Hotchkiss bill, timber | | | | | | 142 | 29 |
| O. E. Norton " arch | | | | | | 597 | 74 |
| G. S. Andrew " lumber | | | | | | 51 | 58 |
| Chas. Spencer, team | | | | | | 3 | 50 |
| Team and carting | | | | | | 25 | 00 |
| | | | | | | $1,217 | 50 |
| | | | | | $\frac{1}{2}$ | 608 | 75 |
| | | | | | | $608 | 75 |

| | | |
|---|---|---|
| 1877. | Interest from Nov. 1, 1877, to Oct. 12, 1878 | 34 70 |
| June 13. | Work on ditch | 2 10 |
| | | $645 55 |
| | Am't of expenses | 16 00 |
| | | $661 55 |

The above is correct.

S. W. KELLOGG.

Please remit to Hon. S. W. Kellogg, Waterbury, Conn.

GEO. M. ALLERTON.

242 COMPLAINANT'S EXHIBIT No. 29. February 4, 1884.

The factory, premises, and machinery owned by the Star Rubber Company, located at Naugatuck, in the State of Connecticut, as the same are now furnished and equipped for the purpose of manufacturing India-rubber goods.

Aug. 4, '76. Term, 5 years. Rent, $5,500 quarterly.

The said Frederick M. Shepard expressly covenants and agrees, as a part of the consideration for this lease, that he will not manufacture nor permit to be manufactured in said factory nor in said premises, nor will he permit any part of the machinery now in and belonging to said factory to be used in said factory or elsewhere in or for the manufacture of India-rubber boots or shoes without the written permission of the said Warren Ackerman, which permission he will give when not any longer restrained by his agreement of May 1st, 1876, with Hotchkiss & Letson, trustees; and the said Frederick M. Shepard agrees that he will pay the aforesaid rent in equal quarterly amounts on the first days of —.

That he will not assign this lease nor underlet said factory nor any part thereof nor of said premises without the written consent of the said Warren Ackerman, and that said factory shall, during the continuance of this lease, be used solely for the purpose and as an India-rubber factory.

And the said Frederick M. Shepard further agrees that he will keep the building and machinery of every kind belonging to said factory in reasonably good repair during the entire period of the lease.

The agreement of May 1st, 1876, between said Ackerman and the trustees shall be held for the benefit of said Shepard or assigned to him. The moneys paid in pursuance of it accruing from August 4th, 1876, shall belong to said Shepard. The latter is to pay $5,500, as above, and is to receive, or collect, or be credited with the $5,000 yearly from August 4,

Privilege of renewal for 5 years on same terms and conditions, except as to restrictions on making boots and shoes.

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1876, as the same shall be paid by the trustees. Said Ackerman does not, however, guarantee or become responsible for the payment of the same by the trustees.

Re-entry.

F. M. SHEPARD.
WARREN ACKERMAN.

COMPLAINANT'S EXHIBIT No. 30. February 4, 1884.

Goodyear's India Rubber Glove M'f'g Co.

* * * * * * *

NAUGATUCK, CONN., *Jan.* 11, 1877.

Mr. F. M. Shepard.

DEAR SIR: Mr. Birdsall has this day handed me the keys of the factory opposite in accordance with your request. I have glanced over the place, and notice there is more or less material here and there that may be of some value—a bale of sheeting, for instance, etc.

He has kept a man on the place, who stays there nights. If this is necessary on account of insurance please inform me at once. When it is a little warmer I will make a more thorough inspection.

Yours truly, GEO. M. ALLERTON.

243½ COMPLAINANT'S EXHIBIT No. 31. February 4, 1884.

Goodyear's India Rubber Glove M'f'g Co.

* * * * * * *

490 BROADWAY, N. Y., *April* 14, 1877.

F. M. Shepard, Esq.

DEAR SIR: In answer to yours of the 13th I would say that a man in my employ, who is married and has no children, would occupy the place, but would require it to be put in habitable shape. The office he would like cleaned out, the railing taken out, and made suitable for a bedroom, and the rooms would want to be cleaned (formerly Mr. Birdsall had some rooms divided off upstairs, but the partitions have been taken down). He would also want a "back-house" and a sink.

I have also a man at work for me, who was the watchman for Birdsall, who will sleep there nights. He will require simply a bed. For my own part, I should consider it safer not to have a family there, so far as fire is concerned. There being no chimney, the stove-pipe runs up thro' the floors and out thro' the roof, and it is pretty old and rusty. Of course a family would have to have a fire to cook. We have our eyes on it during the day, and our watchman is instructed to look out for it at nights. Either party could go in at once. I presume if it was generally known other parties might

be found. I have already had applications, but did not consider the parties suitable. Why can't you run up some day and see me? I await your instructions.

Yours truly, GEO. M. ALLERTON.

243¾ COMPLAINANT'S EXHIBIT No. 32. Feb. 4, 1884.

Goodyear's India Rubber Glove M'f'g Co.

* * * * * * *

NAUGATUCK, CT., *May* 11, 1877.

F. M. Shepard, Esq.

DEAR SIR: Our machinist informs me that the machinery in the Star mill should be looked after to preserve it from serious injury. Some of it, he says, is rusting badly; that the heads of the cylinders to the engine should be taken off and see that the inside is not rusting, &c., &c.

I wish you could find time to run up here and take a look at things.

Yours truly, GEO. M. ALLERTON.

COMPLAINANT'S EXHIBIT No. 33. Feb. 4, 1884.

Goodyear's India Rubber Glove M'f'g Co.

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NAUGATUCK, *Jany.* 21, 1877.

Mr. F. M. Shepard.

DEAR SIR: I have heard nothing from Mr. Ackerman in regard to lot for town hall.

Again I am requested to inquire if the right of way, &c., owned by the Star Rubber Co., on the east bank of the tail race, can be released in case the owners of the lot will build and maintain a substantial wall to each side of the ditch. The town are
244 considering the Andrews lot for a location for a town hall.

I enclose diagram, which may enable you to understand more clearly.

Yours truly, GEO. M. ALLERTON.

Rt. of way for about 72 feet south of Maple St.

COMPLAINANT'S EXHIBIT No. 34. Feb. 4, 1884.

NAUGATUCK, *June* 26, 1877.

M. F. Shepard, Esq.

DEAR SIR: The selectmen have called my attention to the arch that spans the raceway where the highway crosses near the dam. Mr. Carter, of the Tuttle M'f'g Co., thinks something should be done about it at once. It is liable to fall in, and should it do so will probably make much more expense than if attended to now, besides the

question of damages, should any accident happen to persons or property.

Please advise me in regard to the matter. I would suggest having a practical arch-builder look at it and get his opinion in regard to what is best to be done.

Yours truly, GEO. M. ALLERTON.

245 COMPLAINANT'S EXHIBIT No. 35. Feb. 4, 1884.

Goodyear's India Rubber Glove M'f'g Co.

* * * * * * *

NAUGATUCK, *Dec.* 24, 1877.

F. M. Shepard, Esq.

DEAR SIR: A committee appointed by the town in regard to a location for a town hall wish to know if a piece about 75 ft. front on Maple street cor. Water street, on the east end of the Star lot, could be purchased for that purpose; and, if so, at what price?

An early reply of some kind would oblige,

Yours truly, GEO. M. ALLERTON.

Please reply as you may prefer, either direct to Mr. Allerton or through me.

Yours truly, F. M. S.

COMPLAINANT'S EXHIBIT No. 36. Feb. 4, 1884.

Goodyear's India Rubber Glove M'f'g Co.

* * * * * * *

NAUGATUCK, CT., *July* 2*d*, 1878.

F. M. Shepard, Esq.

DEAR SIR: Enclosed please find bill Patrick Conran. I believe I spoke to you about the matter when you were here.

246 The facts are that one of the dirt-and-log bridges on Water or River street gave way while he was passing and broke his wagon. He charges for time spent in getting out and repairs to wagon. I have had the bridges inspected and repaired. I send the bill at his request.

Yours truly, GEO. M. ALLERTON.

The selectmen say if it had been a town bridge they would have considered themselves liable.

COMPLAINANT'S EXHIBIT No. 37. Feb. 4, 1884.

Goodyear's India Rubber Glove M'f'g Co.

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NAUGATUCK, *July 5th*, '78.

To F. M. Shepard, Esq.:

Your logic in the Conran matter is A 1, and just such as I tried to make work; told him he ought to pay us for breaking our bridge. Unfortunately the facts are different. Although the bridges are on the public highway, they are there for the convenience of the Star Rubber Co. and are built and maintained by them. They cover the sluice which carries the water from the waste gates; are built of logs and covered with dirt, and are of such construction that unless you dig them up occasionally you can't tell whether they are sound or not until they break down; then you find out. I have had our carpenter inspect them, and he reports them at present safe. Yours in reference to Tuttle M'f'g Co. at hand; have not heard from them yet.

Yours, GEO. M. ALLERTON.

NEW YORK, April 27, 1870.

M. W. G. VERMILYEA, 6 PARK PLACE.

BOUGHT OF A. S. GATCHEL,

# GOODYEAR RUBBER EMPORIUM,

ESTABLISHED 1849.

**No. 29 CORTLAND STREET, Bet. Broadway and Greenwich Sts.,**

☞ **Wholesale and Retail Dealer in Every Description of Overshoes and all other India Rubber Goods Manufactured under Goodyear's Patent.**

☞ *Claims for damage to be made within five days after receipt of Goods.*

***STEAMSHIP AND RAILROAD SUPPLIES.***

☞ *SPECIAL CONDITION.—All claims for deduction on account of damage, deficiency or otherwise to be made within TEN DAYS after the receipt of the goods.*

ADDRESS Box 1710, N. Y.

NEW YORK, Oct. 4, 1870.

MR. W. G. VERMILYEA.

# Bought of the GOODYEAR RUBBER WORKS,

TERMS,

No. 201 BROADWAY,

A. D. & C. A. HODGMAN.

*Factory, Tuckahoe, Westchester County, N. Y.*

---

25 Blanket, 2 Gum ..... 1.25 ..... $31 25

J. V. G.

Net Cash.

NEW YORK, JAN. 21, 1869.

MR. W. G. VERMILYEA,

Bought of the GOODYEAR RUBBER WORKS,

TERMS, Office 27 MAIDEN LANE, NEW YORK.

A. D. & C. A. HODGMAN. *Factory, Tuckahoe, Westchester County, N. Y.*

50 Df. Off. ---------- 3---- $150 00

252 COMPLAINANT'S EXHIBIT 43.—Feb. 23, '84.

GOODYEAR RUBBER WORKS,

TUCKAHOE, N. Y.

*Latest Price List.*

PIANO AND MELODEON COVERS.

RUBBER SURFACE.

*Piano Covers.*

| | |
|---|---|
| 72 x 108, Plain | $4 00 |
| 52 x 96, " | 3 25 |
| 72 x 108, Printed Border | 5 75 |

* * * * * * *

NET CASH.

A. D. & C. A. HODGMAN,
Office, 27 Maiden Lane, N. Y.
P. O. Box 1710.

March 1, 1869.

N. B.—We will always notify you when any change of prices occurs.

253 COMPLAINANT'S EXHIBIT 44. Feb. 23, 1884.

TERMS.—Net Cash—30 Days.

GOODYEAR RUBBER WORKS,

TUCKAHOE, N. Y.

*Latest Price List.*

PIANO AND MELODEON COVERS.

RUBBER SURFACE.

*Piano Covers.*

| | |
|---|---|
| 72 x 108, Plain | $4 00 |
| 52 x 96, " | 3 25 |
| 72 x 108, Printed Border | 5 75 |

* * * * * * *

A. D. & C. A. HODGMAN,
201 Broadway, N. Y.
P. O. Box 1710.

January 1, 1870.

N. B.—We will always notify you when any change of prices occurs.

*Billiard Table Covers.*

254 COMPLAINANT'S EXHIBIT 45: Feb. 23, '84.

GOODYEAR RUBBER WORKS,

TUCKAHOE, N. Y.

Office 27 Maiden Lane.

Address: P. O. Box 1710.

NEW YORK, *Dec.* 7, 1868.

FRIEND JOE: Contents of enclosed order noted. We will make you plain flock grand cover for $14.00 each, net. If you will inform us the exact style and maker's name of piano we will make a pattern ourselves (unless you have one already) for you—that is, if it is a N. Y. manufacturer.

Yours resp., A. D. & C. A. HODGMAN.

COMPLAINANT'S EXHIBIT No. 46.

Certified copy of "petition and judge's minutes in vacation," in the suit The Goodyear India Rubber Glove M'f'g Co. *et al.* ag'st Daniel B. Moore and Geo. B. Thompson, State of Missouri, circuit court of St. Louis, Oct. term, 1867. On file.

255 United States Circuit Court, Southern District of New York.

GOODYEAR RUBBER CO.

*v.*

GOODYEAR'S RUBBER M'F'G Co. and Others.

WALLACE, *J.*:

The complainant is a corporation organized under the laws of New York in 1872 by its present corporate name. The defendant is a corporation organized under the laws of Connecticut in 1847 by its present corporate name. Each corporation seeks to enjoin the other, the complainant by bill and the defendant by cross-bill, from using the name "Goodyear's Rubber M'f'g Co." Both parties concede this name to be practically identical with complainant's name. The parties are competitors in the manufacture and sale of rubber goods, and have their principal places of business in the city of New York. Each insists that it has acquired the right to the use of the name in dispute, and that such name has become a valuable adjunct of its business, and each insists that the other has endeavored and is now attempting, by wrongful use and appropriation of the name, to divert the custom of the other. As each party concedes that
256 the right to use the name for the purposes of its business is a valuable property right, and asserts that such use by the other is vexatious, embarrassing, and necessarily tends to pecuniary injury, the controversy manifestly resolves itself mainly into a question of title to the name. It is incumbent upon one of the parties to establish a lawful right to use the name as against the other, and the party which does this will be entitled to the relief prayed for.

The name of a corporation has been said to be the "knot of its combination," without which it cannot perform its corporate functions. Smith Merc. Law, 133. It has neither the right nor the power to change the corporate name originally selected without recourse to such formal proceedings for the purpose as may be authorized by the laws under which it has been incorporated or by the consent of the authority from which its charter is derived. Nevertheless, it may become known by another name by usage, and the courts have frequently treated acts done and contracts entered into by corporations under another name as though done or entered into by it with the true name. Minot *v.* Curtis, 7 Mass., 441; South School Dist. *v.* Blakeslee, 13 Conn., 227; Eastham *v.* Blackburn R'y Co., 23 Law J. Exch. (N. S.), 199; Boisgerard *v.* N. Y. Banking Co., 2 Sandf. Ch., 23. There is no reason why a corporation may not acquire a property right to the use of another name as a trade mark or as incidental to the good will of a business as well as an individual, and, if it has acquired such a right, it will, of course, be protected in its
257 enjoyment to the same extent as an individual would be. It cannot be deprived of the right by the assumption of the name subsequently by another corporation, and it is immaterial whether the latter selects its name by the act of corporators who organize under the general laws of a State or whether the name is selected for it in a special act by the legislative body. Manifestly, if the defendant had no right to use the name by which the complainant was incorporated or one practically identical with it at the time of the latter's incorporation, the title of the complainant is clear, because it adopted the name formally, publicly, and legitimately for all its corporate purposes. The defendant insists that it had acquired a prior right to the use of the name; that this right took its origin as early as 1862, and by a gradual process of development had ripened into a good title before complainant was incorporated.

Neither party makes any claim of exclusive right to use the word "Goodyear" alone, that word having become a generic term of description applied to a large class of India-rubber fabrics before either party became a corporation, or the word "Goodyear" in combination with "rubber." There were trading concerns called the "Goodyear Metallic Shoe Co.," "The Goodyear Rubber Works," and the "Goodyear Rubber Emporium" before either party claimed the right to the name in controversy.

The defendant's theory, as sustained by the proofs, is that, beginning in 1862, when it ceased to confine itself to the manufacture of gloves and engaged in manufacturing and selling rubber
258 goods generally, its customers occasionally addressed it in their correspondence by various abbreviated names, such as "Goodyear's Rubber M'f'g Co.," "Goodyear Rubber Co.," "Goodyear's Co.," "Goodyear's I. R. Company," "Goodyear Company," and other abbreviations; that the use of such abbreviated addresses by its customers gradually increased, so that in 1871 the defendant received nearly 200 letters addressed to the Goodyear Rubber Company and nearly 100 to the Goodyear Rubber M'f'g Co. On the

other hand, the proofs show that during this time the defendant received many thousands of letters yearly; that the letters addressed to it by other names were comparatively a small number, averaging not over 500 a year, but embraced upwards of 70 varieties of names, and that its correct corporate name was usually adopted by its correspondents and patrons.

It is not claimed that the officers or agents of the defendant were accustomed during any part of this period to use any other than its corporate name or assumed the right to do so until after the complainant commenced business. To the contrary, they were solicitous and painstaking to correct the tendency of its customers to address it by any other than its corporate name, and it was their practice to send envelopes to customers with its correct name printed upon them to prevent the occurrence of such mistakes. Concisely stated, the question would seem to be whether the defendant can appropriate to itself the various misnomers applied to it by the carelessness
259 or inaccuracy of a comparatively small number of its customers during a period of 10 or 11 years, notwithstanding the zealous and active measures of its managers to repress the practice and their success in preventing it from ripening into a general usage.

It would hardly be contended that an individual could found a claim of possessory right to any species of property upon the unauthorized conduct of other persons, or maintain that he had adopted a name symbolizing his products or identifying his personality with his business by protesting against its use; and of course a corporation does not occupy a different position. The proofs show that there was no general recognition of the defendant among its customers by any other than its corporate name and no adoption by the defendant of a different name, and it must be held that the occasional or persistent use of the misnomer by a few of the defendant's customers gave no privilege to the defendant to a monopoly in the use of the name.

If the proofs warranted the inference that the complainant assumed a name by which the defendant was known for the fraudulent purpose of deceiving the public and of supplanting the defendant in the good will of its business, the courts would not only refuse to assist the complainant, but would intervene to protect the defendant. A careful reading of the proofs fails to disclose the existence of any such design or of any intention to adopt a name with which the defendant had already become appreciably identified.
260 The case is destitute of evidence to indicate that the complainant's corporators were aware or had reason to suppose that the defendant had become known to any extent by any other name than its corporate name. So far as appears they had no knowledge that defendant's customers ever addressed it by other names. Nor is there anything in the proofs to justify the insinuation that the complainant was organized for the purpose of annoying the defendant by illegitimate competition. It does appear that the persons who organized the complainant had been the managers and agents of another corporation, the Rubber Clothing Company, which

for many years had been a competitor of the defendant at the city of New York; that propositions for a consolidation of this company with the defendant had been somewhat discussed between their respective managers without result, and that shortly afterwards the complainant was organized. For a time its affairs were transacted at the office of the Rubber Clothing Company, and the two concerns maintained very intimate relations, as might be expected from the circumstance that the managers were the same persons in both. But the salient facts that the new corporation started with a cash capital of $500,000 and engaged in new branches of trade while the old company continued in business sufficiently refute any theory that complainant was not a *bona fide* concern. If it should be conceded that the two concerns were practically one, and that the main object of the complainant's organization was to enable the Rubber Clothing Company to assume a new name—one which would represent a corpora-
261 tion dealing in rubber articles generally instead of rubber clothing only—there would be no occasion for censure, because the new name was better adapted to describe the business of the corporation. The Rubber Clothing Company had long ceased to manufacture and sell clothing only, and had become engaged in selling rubber goods generally. It was undoubtedly intended by those who organized the new concern to engage in the general rubber trade upon a more extensive scale than that of the old company. The name selected was an appropriate one, and those who adopted it had a perfect right to do so, provided they did not know or have reason to believe that by doing so they would interfere with the business of the defendant. The fact seems to be that both the Rubber Clothing Company and the defendant were doing business under names that were somewhat misleading to such persons as had not learned, by business intercourse with them, that they were manufacturers and dealers in rubber goods generally. It would have been entirely proper for either of them to adopt a new name. The complainant adopted a new name first, and, if it was only the Rubber Clothing Company with a new name, the defendant had no right to complain so long as the name did not serve to engender unfair competition and deceive the trade. As has been said, however, it was a new concern, with a large capital, and contemplating large business operations, and the proofs do not show that its corpo-
rators were moved to select its name by any illicit motive to-
262 wards the defendant. If the name selected was one calculated by its similarity to defendant's name to lead to confusion of business and to confounding the identity of the two corporations it might well be urged that those who adopted it should abide by the consequences, although they were innocent in their intentions, and not ask a court of equity to protect them against the inconvenience which might follow; but the defendant, not content that the consequences shall rest where they fall, insists upon the exclusive right to use the name, and since the complainant assumed it has issued notices and circulars to the trade and put up a sign calling itself by the complainant's name. Upon the same theory it can also claim the exclusive right to use the multitude of misnomers applied

to it from time to time by its careless customers. It has a distinctive name of its own, which it formally adopted, and which has been carefully preserved by its agents until the complainant selected one. It ought not to complain now, because the latter was the first to avail itself of the choice of selection out of all unappropriated names. Certainly it cannot be permitted to appropriate the complainant's name, or one substantially identical, and, by asserting itself as the Goodyear Rubber Company, mislead the public to the detriment of the complainant.

A decree is ordered for complainant, and the cross-bill of the defendant is dismissed.

263 W. W. MacFarland, for complainant; F. H. Betts and Stephen P. Kellogg, for defendants.

264 Circuit Court of the United States, Southern District of New York.

GOODYEAR RUBBER CO.

*vs.*

GOODYEAR'S INDIA RUBBER GLOVE CO. & GOODYEAR'S RUBBER MANUFACTURING CO., Impleaded.

Upon the annexed petition and upon all of the record of the pleadings and proceedings herein let the complainant and his solicitors show cause before me on the 22d day of October, 1884, at the opening of court on that day, or as soon thereafter as counsel can be heard, why the prayer of said petition for the correction of said decree should not be granted and why a rehearing should not be had upon the merits of the case and a rehearing then directed accordingly; and in the meantime, and until the further order of this court in the premises, let the entry and recording of any final decree in this case be stayed.

Oct. 13, 1884.

WM. J. WALLACE.

265 Circuit Court of the United States, Southern District of New York.

GOODYEAR RUBBER CO.

*v.*

GOODYEAR'S INDIA RUBBER GLOVE CO. & GOODYEAR'S RUBBER M'F'G CO., Impleaded, etc.

The petition of the Goodyear's India Rubber Glove M'f'g Co. and Goodyear's Rubber Manufacturing Co., defendants in the above-entitled suit and complainants in the cross-bill in said suit, respectfully shows that the decree made in this case and signed as of the 9th day of October, 1884, is erroneous in several particulars—

First. Because it does not contain a full and correct recital of the proceedings in this cause upon which the decree purports to be and ought to be founded, to wit, in that it omits to state that this case

was commenced in the court of common pleas in the city of New York and was removed therefrom as to the above-named petitioners only to this court.

266 Second. Because the said decree is erroneous in that it orders an injunction against the defendants from using the names "Goodyear's Manufacturing Co." or "Goodyear Rubber Co.," or any abbreviation thereof, when neither of said names have ever been used or intended to be used by the petitioners.

Third. Because in and by said decree all of the costs in the case purport to be taxed upon and adjudged upon the dismissal of the cross-bill, whereas such costs are total costs in the case and ought not to be ordered and adjudged to be paid upon the dismissal of the cross-bill only, but upon the decree generally, for the reason that in case said decree should be reversed an appeal upon any other matter than the dismissal of the cross-bill no part of said costs could be recovered.

Fourth. Because an injunction is ordered in and by said decree specifically against the doing of acts concerning which it was distinctly testified and sworn to on behalf of the complainant in said suit that no complaint was ever made or was now made.

Fifth. Because, as your petitioners believe and respectfully represent, the said decree is erroneous in awarding any relief to the complainant upon the evidence recorded in this case.

And your petitioners further allege that it doth not yet appear in this case that the amount or value of the matter in dispute

267 exceeds $5,000.00, but as matter of fact your petitioners believe and allege that such is the case; and your petitioners respectfully represent that unless such fact be made to appear by the record herein or other proper proceedings your petitioner will be wholly deprived of any right of appeal or review of the decree of this court.

And your petitioners therefore respectfully represent that in view of the possibilty that they may not be able to prosecute an appeal herein that this court should grant a rehearing and a full reconsideration of all questions involved herein.

And your petitioners further pray that the entry or recording of any final decree herein may be stayed until this case can be reheard or resettled upon your petitioners' petition, and that an order may be granted to that effect forthwith, because that the present term of this court is about to expire, and if there be an appeal to the Supreme Court from the decree aforesaid no rehearing can be had, unless the enrollment and recording of the decree at the present term be stayed; no rehearing can be had after the present term under the 88th rule in equity.

And your petitioners will ever pray, etc.

GOODYEAR'S I. R. GLOVE M'F'G CO.,
J. D. VERMEULE, *Pres.*
GOODYEAR'S RUBBER M'F'G CO.,
J. D. VERMEULE, *Pres.*

268 CITY, COUNTY, & SOUTHERN DISTRICT OF NEW YORK:

John D. Vermeule, being duly sworn, deposes and says: I am president of the petitioners above named, and have read the foregoing petition and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

JOHN D. VERMEULE.

Sworn to before me this 11th day of October, 1884.
[SEAL.] THOMAS HUNT,
*Notary Public, New York City and County.*

The above petition, in my opinion, is proper to be be filed.
FREDERIC H. BETTS, *Counsel.*

(Endorsed:) United States circuit court, southern district of New York. Goodyear Rubber Company *vs.* Goodyear's India Rubber Glove Co. & Goodyear's Rubber M'f'g Co. Impleaded, &c. Petition for rehearing and stay. Betts, Atterbury & Betts, solicitors for defendants, 120 Broadway, New York. Filed in open court Oct. 23, 1884. T. Due service of a copy of the within petition for rehearing & stay is hereby admitted. New York, October 15th, 1884. MacFlarland, Reynolds & Harrison, compl't's sol'rs.

269 CITY, COUNTY, & S. D. NEW YORK, *ss:*

U. S. Circuit Court.

GOODYEAR RUBBER CO.
*vs.*
GOODYEAR'S I. R. G. M'F'G CO., *et al.*

Frederic H. Betts, being duly sworn, deposes and says: I have been counsel for the defendants since the commencement of this case. On the 20th day of October, 1884, I learned for the first time that any rubber company had been, prior to the organization of the complainant, organized or incorporated or done business under the name — Goodyear Manufacturing Company. I learned this fact in conversation with E. B. Preston, Esq., of Chicago, who came here to consult me on that day in reference to the action of the Goodyear Rubber Co. against the New Jersey Rubber Shoe Company. Mr. Preston then informed me that the predecessor in business of the Boston Belting Company, a corporation doing business in rubber goods, had been known by that name, and he believed was incorporated under that name and had always had a sign with that name on it on their store in Boston, and that he understood that
Mr. Sheppard's company, the plaintiff, had never dared to
270 put out a sign in Boston with the name Goodyear Rubber
Company upon it, owing to their knowledge of the prior adoption and use of the name "Goodyear Manufacturing Company." I immediately wrote to the secretary of state of Massachu-

setts asking him to search for a certificate of incorporation under that name in that State and received this morning (October 22d) the annexed certificate.

FREDERIC H. BETTS.

Sworn to this 22d day of October, 1884.

JOHN A. SHIELDS,
*U. S. Com'r.*

271 CHAPTER 177.

Commonwealth of Massachusetts, in the year one thousand eight hundred and forty-five.

An act to incorporate the Goodyear Manufacturing Company.

Be it enacted by the senate and house of representatives in general court assembled, and by authority of the same, as follows:

SECTION 1. Henry B. Goodyear, James A. Dorr, Henry Edwards, their associates and successors, are hereby made a corporation by the name of the Goodyear Manufacturing Company for the purpose of manufacturing India-rubber goods in the town of Roxbury, in the county of Norfolk, with all the powers and privileges and subject to all the duties, restrictions, and liabilities set forth in the thirty-eighth and forty-fourth chapters of the Revised Statutes.

SECTION 2. Said corporation may hold, for the purposes aforesaid, real estate to the amount of twenty-five thousand dollars, and the whole capital stock of said corporation shall not exceed one hundred thousand dollars.

HOUSE OF REPRESENTATIVES, *March* 21, 1845.

Passed to be enacted.

SAM. H. WALLEY, JR., *Speaker.*

IN SENATE, *March* 22, 1845.

272 Passed to be enacted.

LEVI LINCOLN, *President.*

March 22, 1845.

Approved:

GEO. N. BRIGGS.

COMMONWEALTH OF MASSACHUSETTS,
SECRETARY'S DEPARTMENT, BOSTON, *Oct.* 21, 1884.

I certify the foregoing to be a true copy of the act of incorporation of the Goodyear Manufacturing Company, and further certify that by act of the Legislature, chapter 96, of the year 1847, approved March 17, 1847, the name of said corporation was changed to that of the "Boston Belting Company."

Witness the seal of the Commonwealth.

[SEAL.] HENRY B. PEIRCE,
*Secretary of the Commonwealth.*

(Endorsed:) Filed in open court Oct. 23d, 1884. T.

273 U. S. Circuit Court.

GOODYEAR RUBBER CO.

*vs.*

GOODYEAR INDIA RUBBER GLOVE M'F'G CO. *et al.*

On motion for rehearing and to resettle decree.

Before Hon. Wm. J. Wallace, circuit judge. After argument of counsel on motion.

Judge WALLACE: There is no ground for the motion for rehearing. The use of the name Goodyear Manufacturing Company in Boston does not seem material. The injunction in this case is based on interference in trade. If the plaintiff and defendant had been in different cities there might have been no interference. It is the proximity of one store to the other and the tendency of the defendants' acts to divert the plaintiff's custom that makes the trouble.

Mr. BETTS: The defendant is not to blame for that; the plaintiff followed our location and established its store near us. I wish I could be able to satisfy your honor of what I know to be the
274 fact, that this trouble and confusion has been altogether caused by the plaintiff's action.

Judge WALLACE: I only know what I find in record in this case, and I have read that very carefully. Now, Mr. MacFarland, there are two points in regard to the form of decree. I think the first decree was wrong in charging the costs upon the dismissal of the cross-bill; the costs ought to be made general costs in the case; then there is the form of injunction to be considered.

Mr. BETTS: I hope your honor will expressly limit the decree to the two names, Goodyear Rubber Co. and Goodyear Rubber Manufacturing Company; "any abbreviation" of those names is too general, and it enables Mr. McFarland to contend that you intend to enjoin such names as Goodyear Company or Rubber Company or Goodyear Manufacturing Company; those are all abbreviations, which I do not understand to be the case, but the decree is being used so in other litigations. I hope your honor will express this clearly in the decree.

Judge WALLACE: I think my opinion is sufficiently clear on that point; I do not think it necessary to put it in the decree. I certainly did not intend to enjoin "Goodyear Company" any more than "Rubber Company;" that is not the abbreviation meant.

Mr. BETTS: Well, it is being used so and as this opinion of your honor's and decree will be used in different circuits—because
275 these rubber companies have their business all over, even in California, and other suits may be brought against agents in other States—it ought to be clear.

Judge WALLACE: The plaintiff cannot contend that it has a right to "Goodyear Company." Mr. McFarland, do you claim you have a right to that name?

Mr. MCFARLAND: I hope your honor will not go into that matter and will leave the decree as it is; that matter is before other courts.

If your honor should consider the matter of changing the decree at that point I hope you will hear me for five minutes or ten minutes on it.

Mr. BETTS: He does claim it and I hope your honor will embody in the decree a statement which will remove misapprehension.

Judge WALLACE: Mr. McFarland, you may hand in a new form of decree, precisely like the old one, except that the costs are made general costs in the case, and I will consider whether any alterations of the injunction clause is necessary.

(Endorsed:) United States circuit court, southern district of New York. Goodyear Rubber Co. *vs.* Goodyear India Rubber Glove M'f'g Co. *et al.* Report of proceedings on settlement of decree. Betts, Atterbury & Betts, solicitors for defendants, 120 Broadway, New York. U. S. circuit court. Filed Nov. 8, 1884. Timothy Griffith, clerk.

276 The President of the United States of America to Goodyear's India Rubber Glove Manufacturing Company and [SEAL.] Goodyear's Rubber Manufacturing Company, and to their and each of their counsellors, attorneys, solicitors, and agents, and each and every of them, Greeting:

Whereas it has been represented to us in our circuit court, in equity, for the southern district of New York, on the part of the Goodyear Rubber Company, plaintiff, that the said Goodyear Rubber Company has lately exhibited its bill of complaint in our said circuit court for the southern district of New York against you, the said Goodyear's India Rubber Glove Manufacturing Company and Goodyear's Rubber Manufacturing Company, to be relieved touching the matters therein complained of, in which bill it is stated amongst other things that you are combining and confederating with others to injure the said plaintiff touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience, we therefore, in consideration thereof and of the particular matters in the said bill set forth, do strictly command you, the said Goodyear's India Rubber Glove Manufacturing Company and Goodyear's Rubber Manufacturing Company, and the persons before mentioned, and each and every of you, under the penalty of ten thousand dollars, to be levied on your lands, goods, and
277 chattels to our use, that you do absolutely desist and refrain from using or in any way employing the name Goodyear's Rubber Manufacturing Company or the name Goodyear Rubber Company, or any abbreviation thereof representing such integral name, in their business, upon their signs, their bills of merchandise, receipts, letters, products of their manufacture, or otherwise; also from imitating and using the Goodyear Rubber Company's corporate name by the suppression altogether of the words India and glove in the said Goodyear's India Rubber Glove Manufacturing Company's corporate name, or by printing or writing the said words in smaller or more obscure letters than those used to express the other

words of the said Goodyear's India Rubber Glove Manufacturing Company's corporate name, or by the use of initial letters to indicate the said words of a smaller or more obscure character than the letters used for the other component words of the said Goodyear's India Rubber Glove Manufacturing Company's corporate name, provided that nothing herein contained shall be construed to prevent the said Goodyear's India Rubber Glove Manufacturing Company from using and employing initial letters to indicate any of the component words of the said Goodyear's India Rubber Glove Manufacturing Company's name.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, the 28th day of October, one thousand eight hundred and ——.

278 TIMOTHY GRIFFITH, *Clerk.*

MACFARLAND, REYNOLDS & HARRISON,
*Solicitors for Goodyear Rubber Company.*

(Endorsed:) Circuit court of the United States, southern district of New York. Goodyear's Rubber Company *vs.* Goodyear's India Rubber Glove Manufacturing Company and Goodyear's Rubber Man'f'g Company. Writ of injunction. MacFarland, Reynolds & Harrison, complainant's solicitors, 59 & 61 Wall St., New York city. I hereby certify that on the 29 day of October, 1884, at the city of New York, in my district, I personally served the within writs upon the within-named Goodyear India Rubber Glove Manufacturing Company and Goodyear's Rubber Manufacturing Company by exhibiting to John D. Vermeule, president of both def't companies, the within original, and at the same time leaving with him a copy thereof. Dated Oct. 29, 1884. Joel B. Erhardt, U. S. marshal S. D. N. Y. U. S. marshal's office, S. D. N. Y. Received Oct. 28, 1884. U. S. circuit court. Filed Oct. 31, 1884. Timothy Griffith, clerk.

279 Circuit Court of the United States, Southern District of New York.

THE GOODYEAR RUBBER CO.

*vs.*

GOODYEAR'S INDIA RUBBER GLOVE M'F'G CO. *et al.*

The petition of the defendant, The Goodyear's India Rubber Glove M'f'g Co., respectfully shows to this court—

That said defendant was, on the 30th day of October, 1884, served with a copy of what purported to be an injunction issued by this court, a copy of which is hereto annexed.

That said defendant has on hand and in process of manufacture a very large stock of rubber goods, consisting of hundreds of different articles of a great number of varieties.

That upon all or nearly all of such articles is stamped or impressed in the rubber in the process of making the trade mark of this defendant, a copy of which is hereto annexed.

That for the past ten years in all of the price-lists and catalogues of the defendant such trade mark has been published and particular attention called to the same. The copy hereto annexed is
280 taken from the defendant's price-list of boots and shoes.

That the machinery, tools, molds, and rollers of the defendant for manufacturing their rubber goods have cut into them an impression of such trade mark.

That such trade mark was duly registered by the defendant in the United States Patent Office as a trade mark on the the 9th day of June, 1874, and has been continuously used by said defendant ever since and for a long time prior to said time.

The defendant herewith produces a certified copy of such registration of said trade mark.

That it would be practically impossible to remove such trade mark from its manufactured goods and any attempt to remove the same would result in enormous expense and loss.

That your petitioner is advised by counsel that the use of such trade mark is not within the intent and meaning of the injunction in this cause, and that the use of such trade mark would not, in their opinion, be an act of disobedience to said injunction, because the prominent, central, and conspicuous feature of such trade mark is the figure of a "glove."

That your petitioners have, however, been advised to apply to this court for instruction in the premises in order that they may not seem to do or attempt to do anything in contravention of the decree and injunction of this honorable court.

281 Wherefore this petitioner prays for the instruction of this honorable court whether the use of the trade mark aforesaid is in contravention of the decree or injunction of this honorable court, and for directions as to their proper conduct in the premises.

And your petitioner will ever pray, etc.

GOODYEAR'S INDIA RUBBER
GLOVE M'F'G CO.
J. D. VERMEULE.

CITY, COUNTY, & SOUTHERN DISTRICT OF NEW YORK, *ss:*

John D. Vermeule, being duly sworn, says: I am president of the defendant, The Goodyear's India Rubber Glove M'f'g Co. I have read the foregoing petition and the facts therein stated are true.

JOHN D. VERMEULE.

Sworn to before me this 7th day of Nov., 1884.

[SEAL.] JOSEPH H. MARVIN,
*Notary Public, Kings Co.*

Certificate filed in New York Co.

282 503 & 505 Broadway, N. Y.
Trade mark.
Goodyear's
Rubber
(Cut of glove)
M'f'g Co.
New York.

We call particular attention to the above trade mark on each and every boot and shoe manufactured by us.

All not having the above with glove in centre are imitations.

(Endorsed:) United States circuit court, south. district of New York. The Goodyear Rubber Co. *vs.* The Goodyear India Rubber Glove M'f'g Co. *et al.* Petition & notice. Betts, Atterbury & Betts, solicitors for def'ts, 120 Broadway, New York. Due service of a copy of the within petition & affidavit is hereby admitted. New York, Nov. 8th, 1884. MacFarland, Reynolds & Harrison, plaintiff's attorneys. Sirs: Please take notice that we shall bring the
283 petition served upon you this day to hearing before this honorable court on Friday, November 14, 1884, at 11 a. m, or as soon thereafter as counsel can be heard. Yours, respectfully, Betts, Atterbury & Betts, sol'rs for def't. To Messrs. MacFarland, Reynolds & Harrison, sol'rs for compl't. Filed in open court Dec. 5, 1884. T.

284 At a circuit court of the United States held in and for the southern district of New York, held at the court-house, in said city, on the 6th day of December, 1884.

Present: Hon. Wm. J. Wallace, judge.

GOODYEAR RUBBER COMPANY

*vs.*

GOODYEAR'S INDIA RUBBER GLOVE M'F'G CO. *et al.*

The defendant having presented a petition for instruction as to whether the use of defendant's trade mark registered June 4th, 1874, is or is not a violation of the injunction issued herein as said trade mark has been used — impressed on defendant's goods, after hearing Frederic H. Betts, on behalf of said petitioner, and Wm. W. McFarland, Esq., objecting to the consideration thereof, it is ordered that the court declines to consider said petition on the merits.

WM. J. WALLACE.

(Endorsed:) U. S. circuit court, southern dist. of N. Y. Goodyear Rubber Company *vs.* Goodyear's India Rubber Glove M'f'g Co. *et al.* Order declining to consider petition, etc. U. S. circuit court. Filed Dec. 5, 1884. Timothy Griffith, clerk.

285 United States Circuit Court, Southern District of New York.

GOODYEAR RUBBER COMPANY

*vs.*

GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, GOODYEAR'S RUBBER MANUFACTURING COMPANY.

This cause having been commenced in the superior court of the State of New York against the two above-named defendants and John D. Vermeule and George M. Allerton, and having been removed into this court on or about the twentieth day of July, 1884, upon the petition of all the said defendants, except the said John D. Vermeule, came on to be heard at this term, the death of the defendant, George M. Allerton, having been previously suggested, upon the record, and the cause was argued by counsel, thereupon and upon consideration thereof, it is ordered, adjudged, and decreed that the cross-bill of the defendant, The Goodyear's India Rubber Glove Manufacturing Company, be dismissed.

286 And it is further ordered, adjudged, and decreed that the defendants and each of them be, and they hereby are, perpetually restrained and enjoined from using or in any way employing the name Goodyear's Rubber Manufacturing Company or the name Goodyear Rubber Company or any abbreviation thereof representing such integral name in their business, upon their signs, their bills of merchandise, receipts, letters, products of their manufacture, or otherwise.

And it is further ordered, adjudged, and decreed that the defendant, Goodyear's India Rubber Glove Manufacturing Company, be restrained and perpetually enjoined from imitating and using the complainant's corporate name by the suppression altogether of the words India and glove in the said defendants' corporate name or by printing or writing the said words in smaller or more obscure letters than those used to express the other words of the said defendants' corporate name, or by the use of initial letters to indicate the said words of a smaller or more obscure characters than the letters used for the other component words of the said defendants' corpo-

287 rate name: Provided, That nothing herein contained shall be construed to prevent the said defendants from using and employing initial letters to indicate any of the component words of the said defendants' name.

It is further ordered, adjudged, and decreed that the defendants pay to the complainant six hundred and sixteen $\frac{55}{100}$ dollars costs as taxed by the clerk of this court, and that the complainant have judgment and execution therefor.

WM. J. WALLACE.

Endorsed: United States circuit court, southern district of New York. Goodyear Rubber Company *vs.* Goodyear's India Rubber Glove Manufacturing Company, Goodyear's Rubber Man'f'g Company. Decree. U. S. circuit court. Filed Oct. 27, 1884. Timothy Griffith, clerk.

288 United States Circuit Court, Southern District of New York.

GOODYEAR RUBBER COMPANY

*vs.*

GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY *et al.*

It is hereby stipulated and agreed by and between the solicitors for the respective parties that all the exhibits in the cause be retained by the clerk of this court until they are required at the argument of the cause before the Supreme Court and forwarded then to the clerk.

MACFARLAND, REYNOLDS & HARRISON,
*Complainant's Solicitors.*
FREDERIC H. BETTS, *Def'ts' Sol'r & Counsel.*

Endorsed: U. S. circuit court. Filed June 25, 1885. Tim-
289 othy Griffith, clerk.

290 United States Circuit Court, Southern District of New York.

GOODYEAR RUBBER COMPANY

*vs.*

GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, GOODYEAR'S RUBBER M'F'G CO., *et al.*

To the honorable the Supreme Court of the United States:

The appeal of the Goodyear's India Rubber Glove Manufacturing Company, Goodyear's Rubber M'f'g Co., the above-named defendants and appellants, respectfully showeth—

That on the 7th day of October, 1882, the bill of the above-named complainant and respondent was filed, with the then record of the case, in the circuit court of the United States, having been removed thence from the superior court of the city of New York; that on the 16th day of October, 1882, the two defendant corporations filed their joint answer, the defendant, George M. Allerton, filed his
291 answer, and the defendant, The India Rubber Glove Manufacturing Company, filed its cross-bill; that on the 6th day of November complainant filed its replications to the answer of defendants, and on the 12th day of December filed its answer to the cross-bill, and that on 24th day of January the replication to the answer to the cross-bill was filed.

That complainant's bill alleges that the complainant is a corporation duly organized and reorganized under the laws of this State under the corporate name of Goodyear Rubber Company; it alleges the purposes for which the company was organized, the extent of its business, the continuous use of its said corporate name, and that it is lawfully possessed of an exclusive right and title to its corporate name so acquired and employed, and is vested with a right of property therein, &c.

It further alleges that at the date of its organization the defendant,

The Goodyear India Rubber Glove M'f'g Co., was and for
292 some years previous to that date had been carrying on business under the said name in the city of New York; that at some time after the organization of the complainant corporation *that* the said defendant corporation began to abbreviate its corporate name, making use of it in different sizes of letters, &c., and using the name "Goodyear Rubber Manufacturing Company" and other devices of this character, having for their object an imitation and appropriation of the plaintiff's name.

It further alleges that the devices of the defendants set forth in the bill are wrongful and unlawful, and are intended to deceive the public and the customers of the plaintiff by inducing the belief that the defendants' place of business is in fact the plaintiff's place of business; that such devices have been successful, by reason whereof the complainant has sustained and will continue to sustain great loss and damage.

The bill further asks judgment that the defendants may be restrained from using the name Goodyear Rubber Manufacturing Company or any equivalent name as and for its own name,
293 and for such further relief as to the court may appear just.

The defendant corporations in their joint answer allege, amongst other things, that the Goodyear India Rubber Glove M'f'g Co. is a corporation duly organized under the laws of the State of Connecticut in the year 1847, and the Goodyear Rubber M'f'g Co. under the laws of the State of New York in the year 1873; that the complainant has no standing in a court of equity, as it has not done equity and does not come into court with clean hands; that they have no knowledge of the organization of the complainant corporation.

It alleges the business, and its kind, of the Goodyear India Rubber Glove M'f'g Co.; that for many years, from its wide notoriety as the principal corporation engaged in the sale of rubber goods having the name of Goodyear as part of its name, it has become and been known to the trade generally by abbreviated, popular, and generally used titles, in which "Goodyear" in connection with
294 the word "company" or "Co.," or similar brief words, has been the distinguishing characteristic; that by the adoption of the name of Goodyear it has acquired a valuable right and interest in said name as good will of its business and as a trade mark.

It alleges the extent of the use in its business of abbreviated titles containing the name Goodyear.

It alleges that the complainant has no just or equitable title in the name claimed in the bill of complaint as against the defendants, and that the parties calling themselves by the name of the plaintiff were associated for the purpose of injuring said defendant corporation and appropriating its well-known trade mark and good will of its business.

It alleges warning to the complainant and the acts and representations of the complainant in pursuing the intention to interfere with the business of the defendant.

And it prays that the bill be dismissed with costs.

That the answer of the defendant, George M. Allerton, is
295 substantially similar to the answer of the defendant corporations. The defendant, George M. Allerton, died pending the suit, and no revivor was had.

The defendant, The Goodyear India Rubber Glove Manufacturing Company, in its cross-bill alleges its organization under the laws of the State of Connecticut, and also under the laws of the State of New York.

It alleges that it was incorporated in the year 1847 and the incorporation of the Goodyear Rubber M'f'g Co., and its kind of business during the years since and the amount of its business, and for upwards of twenty years its wide notoriety as the principal corporation engaged in the sale of rubber goods in New York and elsewhere having the name "Goodyear" as part of its title.

It alleges that it has become known to the trade generally throughout the world by names abbreviated from its full corporate name, in which the name "Goodyear," in connection with the word company, has always been used as designating it, omitting words seem-
296 ing to limit its business.

It alleges a right of property of great value in the use of the words Goodyear Company and so forth.

It alleges its large correspondence in its aforementioned abbreviated names.

It alleges that the complainant was associated to unlawfully deprive it of its enjoyment in the right, good will, and properties aforesaid, and to divert its business, and that it has greatly injured its business and trade, doing great damages.

It alleges the changes of name of the complainant for the purpose of injuring the defendant corporation and the warnings from the defendant to the complainant.

It alleges the receipt by the complainant of letters intended for the defendant and other unlawful acts.

It alleges and claims for the defendant a trade mark to the said mentioned names, and that it has suffered and will suffer great loss and damage by the acts of the complainant.

It prays that the complainant be restrained from using and
297 claiming the name Goodyear Rubber Company, &c.; that it may have damages against the complainant and recover the profits realized by the complainant through its inequitable acts, and for such other relief as may be meet.

The plaintiff, The Goodyear Rubber Company, in its answer to the cross-bill of the defendants, denies the main allegations in the cross-bill, particularly as the right of the defendent to the name Goodyear, and that it has any good will or any right, title, or interest of any kind whatsoever in the said several combinations and collections of names embracing the word Goodyear or its wide notoriety under such names.

It denies that it has recognized the defendant under any names but its corporate name, or that the complainant changed its names for the purposes alleged or does any of the inequitable acts alleged.

It admits receiving letters, &c., intended for the defendant.

It alleges that the defendants claim to be a foreign corporation by the name of the Goodyear India Rubber Glove M'f'g Co., and
298 alleges that the complainant was duly organized under its corporate name and has established thereunder a profitable business, and repeats some of the allegations of its bill, and prays that it be dismissed with its reasonable costs, &c.

That proofs on both sides were taken.

That on the first day of May, 1884, this cause came on for final hearing upon the pleadings and proofs therein and was argued by counsel for the respective parties thereto.

That on the 15th day of August, 1884, the court filed an opinion, wherein it was held, amongst other things, that complainant't bill should be sustained and defendant's cross-bill be dismissed.

That on the 27th day of October, 1884, this court made and entered a final decree in said suit sustaining the complainant's bill and decreeing an injunction and dismissing said cross-bill.

That the matter in dispute in this case consists of the right to use, as designating the business carried on by the parties hereto,
299 the name Goodyear Rubber Co., or Goodyear Rubber Manufacturing Co., or a name that represents such integral name, and that the value of such matter in dispute exceeds the sum or value of $5,000, exclusive of costs, and the decree depriving a party of the use of such name deprives it of more than $5,000 in value.

Wherefore the appellant appeals from the whole of the decree entered pursuant to said opinion in the circuit court of the United States, and respectfully prays that the said decree of said circuit court, and the bill, cross-bill, answers, pleadings, depositions, evidence, proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed and a decree made reversing said decree of the circuit court and granting the prayer of said cross-bill, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated New York, October 29th, 1884.

300 (Signed) GOODYEAR I. R. GLOVE M'F'G CO.,
J. D. VERMEULE, *Pres't.*

(Signed) GOODYEAR RUBBER M'F'G Co,
J. D. VERMEULE, *Pres't.*

(S'g'd) BETTS, ATTERBURY & BETTS,
*Defendants' Solicitors.*

(S'g'd) FREDERIC H. BETTS,
*Of Counsel.*

It satisfactorily appearing by the foregoing petition that the matter in dispute in this cause exceeds the sum or value of five thousand dollars, exclusive of costs, the above appeal is hereby allowed.

Dated Oct. 31, 1884.

(Signed) WM. J. WALLACE.

STATE OF NEW YORK, }
*City and County of New York,* } ss:

On this 29th day of October, 1884, before me personally appeared J. D. Vermeule, to me personally known, who, being by me duly sworn, did depose and say that he was president of the Good-
301 year India Rubber Glove Manufacturing Company and of the Goodyear Rubber Manufacturing Company; that he has read the foregoing petition, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those he believes it to be true; that he signed the names of the appellants herein to said petition by virtue of his authority as president of said corporation, appellants.

(S'g'd) JOHN D. VERMEULE.

Sworn to and subscribed before me this 29th day of October, 1884.

[NOTARIAL SEAL.] (S'g'd) JOSEPH H. MARVIN,
*Notary Public Kings Co.*

Certificate filed in New York Co.

(Endorsed:) United States circuit court, southern district of New York. Goodyear Rubber Company *vs.* Goodyear's India Rubber Glove M'f'g Co. *et al.* Citation and petition on appeal. Betts, Atterbury & Betts, solicitors for def'ts, 120 Broadway, New York.
302 Due service of a copy of the within citation & petition on appeal is hereby admitted. New York, Nov. 5th, 1884. MacFarland, Reynolds & Harrison, sol'rs for compl't. U. S. circuit court. Filed Nov. 8, 1884. Timothy Griffith, clerk.

303 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

GOODYEAR RUBBER COMPANY

*vs.*

GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY and GOODYEAR RUBBER MANUFACTURING COMPANY.

Know all men by these presents that we, John D. Vermeule and Clinton Van Vliet, are held and firmly bound unto the above-named Goodyear Rubber Company in the sum of thirteen hundred dollars, to be paid to the said Goodyear Rubber Company; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this — day of October, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas the above-named defendants, appellants, have prosecuted an appeal to the —— Court of the United States to reverse the final decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such that if the above-named defendants, appellants, shall prosecute their appeal to effect and answer all damages and costs if said defendants, appellants, fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN D. VERMEULE. [L. S.]
CLINTON VAN VLIET. [L. S.]

Sealed and delivered and taken and acknowledged this — day of October, 1884, before me—

[L. S.] JOSEPH H. MARVIN,
*Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

304 [Endorsed:] Vol. —. Page —. U. S. circuit court, southern district of New York. Goodyear Rubber Company *vs.* Goodyear India Rubber Glove M'f't'g Co. *et al.* Bond for costs on appeal to the U. S. Supreme Court. —— ——, proctor. Approved Oct. 9th, 1884. Wm. J. Wallace. Filed this — day of ——, 18—. U. S. circuit court. Filed Oct. 10th, 1884. Timothy Griffith, clerk.

UNITED STATES OF AMERICA, }
*Southern District of New York,* } *ss:*

John D. Vermeule & Clinton Van Vliet, severally, being duly sworn, do depose and say, each for himself, that he is worth the sum of thirteen hundred dollars over and above all his just debts and liabilities.

JOHN D. VERMEULE.
CLINTON VAN VLIET.

Sworn to this — day of October, A. D. 1884, before me—

[L. S.] JOSEPH H. MARVIN,
*Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

305 UNITED STATES OF AMERICA, *ss:*

To the Goodyear Rubber Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, eighteen hundred and eighty-five, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein you are the appellee, and the Goodyear India Rubber Glove Manufacturing Company, Goodyear Rubber Manufacturing Company are the appellants, to show cause, if any there be, why the decree recited in the said appeal should not be reversed and speedy justice should not be done to the parties in that behalf.

(Signed) WM. J. WALLACE.

Dated New York the 31st day of October, 1884.

306 UNITED STATES OF AMERICA, } ss:
*Southern District of New York,* }

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to three hundred and five, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Goodyear Rubber Company, appellee, against Goodyear India Rubber Glove Manufacturing Company and Goodyear Rubber Manufacturing Company, appellants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 9th day of July, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the said United States the one hundred and tenth.

[Seal of the U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 309. The Goodyear India Rubber Glove Manufacturing Company & The Goodyear Rubber Manufacturing Company, appellants, *vs.* The Goodyear Rubber Company. Filed September 26, 1885.

# ADDITION TO RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1887.**

No. ~~309~~ 49

THE GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY ET AL., APPELLANTS,

*vs.*

THE GOODYEAR RUBBER COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

**FILED MARCH 26, 1888.**

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1887.

No. 309.

THE GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY ET AL., APPELLANTS,

*vs.*

THE GOODYEAR RUBBER COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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| No. 21—Notice to the public by Goodyear's Rubber M'f'g Co., &c. | 138 | 93 |
| No. 22—Petition of Goodyear Rubber Co. to the Committee on Incorporations, Connecticut Legislature | 138 | 93 |
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1 Supreme Court of the United States.

THE GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY and The Goodyear Rubber Manufacturing Company, Appellants,

*vs.*

THE GOODYEAR RUBBER COMPANY.

It is hereby stipulated that the annexed proofs, being complainants' *prima facie* case, be certified by the clerk of the circuit court of the United States to the Supreme Court of the United States as part of the record on the appeal, the same having been omitted by mistake from the original record certified to the said Court.

Dated March 9th, 1888.

W. W. MACFARLAND,
*Counsel for Appellees.*
BETTS, ATTERBURY & BETTS.
*Sol'rs for Appellees.*

1½ Circuit Court of the United States, Southern District of New York.

GOODYEAR RUBBER COMPANY
*vs.*
THE GOODYEAR I. R. G. M'F'G CO. *et al.*

It is hereby stipulated and agreed that the testimony taken by either party in support of the bill of complaint or the answers therein shall stand also as the testimony under the cross-bill and answer thereto, and may be used the same as if specially taken under the cross-bill and answer to the cross-bill by the party taking the same.

Dated May 24th, 1883.

BETTS, ATTERBURY & BETTS,
*Def'ts' Sol'rs.*
MACFARLAND, REYNOLDS & LOWREY,
*Compl't's Sol'rs.*

2 Circuit Court of the United States, Southern District of New York.

GOODYEAR RUBBER COMPANY
*vs.*
GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING CO. and GOODYEAR'S RUBBER MANUFACTURING CO.

SIRS: You will please take notice that on the 10th day of February, 1833, at 11 o'clock in the forenoon of that day, at No. 61 Wall street, in the city of New York, before John A. Shields, Esq., examiner, we shall take the testimony of Frederick M. Shepard and such other witnesses as may be produced on behalf of the complainant, The Goodyear Rubber Company, and shall offer in evidence

on behalf of the complainant certain documentary evidence in said suit.

Dated Feb. 1st, 1883.

MACFARLAND, REYNOLDS & LOWREY,
*Complainant's Sol'rs.*

To Betts, Atterbury & Betts, sol'rs for def'ts.

On the foregoing notice it is hereby ordered that the taking of testimony and introduction of documentary evidence on the part of the complainant in the above-entitled suit proceed before
3 me on the 10th day of February, 1883, at 11 o'clock a. m., at 61 Wall street, New York, the office of the complainant's solicitors.

February 2d, 1883.

JOHN A. SHIELDS,
*Examiner, &c.*

Endorsed: "Circuit court of U. S., so. dist. of N. Y. Goodyear Rubber Co. *vs.* Goodyear India Rubber Glove Manufacturing Co. *et al.* Notice of taking testimony. MacFarland, Reynolds & Lowrey, compl't's sol'rs, 61 Wall street, New York.

"Service this day of the within notice is hereby admitted.
"N. Y., Feb. 2d, 1883.

"BETTS, ATTERBURY & BETTS,
*"Sol'rs for Def'ts."*

4 U. S. Circuit Court, Southern District of New York.

GOODYEAR RUBBER COMPANY
*against*
GOODYEAR INDIA RUBBER GLOVE M'F'G COMPANY *et al.*

Testimony taken on the part of the complainant, under and pursuant to the 67th rule of the Supreme Court of the United States, as amended, before John A. Shields, Esq., a standing examiner of said court.

NEW YORK, *February 20th*, 1883.

Appearances: W. W. MacFarland, Esq., for complainant; C. W. Betts, Esq., for defendants.

FREDERICK M. SHEPARD, a witness called on behalf of the complainant, being duly sworn, testified as follows:

1 Q. Where do you reside, Mr. Shepard?
A. East Orange, New Jersey.
2 Q. What is your business?
A. Manufacturing and selling India-rubber goods.
3 Q. How long have you been engaged in that business?
A. Since 1853.
4 Q. Since that time have you been well acquainted with the extent and course of that business in this country?

A. I have been well acquainted with it.

5 Q. What are your relations to the complainant, The Goodyear Rubber Company?

A. I have been president of the company since its organization.

6 Q. When was it organized—about what time?

A. About November, 1872.

7 Q. Is the paper which I now hand you a certified copy of the articles of association?

A. It is.

Certified copy of the articles of incorporation of the Goodyear Rubber Company offered in evidence and marked Complainant's Exhibit 1, Feb. 20, 1883, J. A. S., examiner.

8 Q. How long after the filing of that certificate was your company organized—about?

A. It was organized within a few weeks, commenced business, and has continued business ever since.

9 Q. Have you carried on business under the identical name specified in the articles of association?

A. Under the same name.

10 Q. State, Mr. Shepard, if you please, the facts concerning the development and growth of the business of your corporation.

A. It commenced business, I think, about the first of January, 1873—commenced manufacturing and selling goods in the city of New York. It continued the business here and has done so ever since. Within the first year it commenced business also established business at other places, at Chicago, St. Louis, and at San Francisco; some little time after at Buffalo and at Milwaukee. It has transacted business in all those places, does now, and has also transacted business in other countries, selling goods to Australia, to Mexico, South America, to China, to Europe, and to Japan.

11 Q. Has the business from 1873 on increased in magnitude or not?

A. Yes, sir; it has steadily increased in size and extent since its beginning.

12 Q. Is it or is it not somewhat of an extensive business at present?

A. Yes, sir; its business amounts to several millions of dollars a year.

13 Q. Have you carried on business since the organization

6 of this corporation under any other name?

A. No, sir; the business has always been carried on under the name of the Goodyear Rubber Company.

14 Q. And its business is known by that name?

A. Its business is known by that name.

15 Q. So far as you know, to all your customers?

A. Yes, sir; to all our customers.

16 Q. Some years after the filing of this certificate of incorporation in evidence, I think you reorganized your business; will you state the facts concerning that matter?

A. That reorganization, by the same name, was under another

statute of the State of New York, by the advice of counsel; the date of that reorganization I do not remember.

17 Q. Will you refresh your recollection by looking at this paper? (Hands witness paper.)

A. In 1879 we reorganized under another act of the State of New York—the business corporation act, I think it is called—under the advice of our counsel.

18 Q. Is the document which I have placed in your hands a copy of the certificate of reorganization?

A. It is; yes, sir; of the reorganization.

Certificate of reorganization offered in evidence and marked Complainant's Exhibit No. 2, February 20, 1883, J. A. S., examiner.

19 Q. Since that time you have carried on business under your reorganization?

A. Yes, sir; we have carried the business on under the reorganization.

20 Q. Can you state, in a general way, the extent of your business, carried on under that name, compared with the extent of that of rubber houses generally in this country?

A. So far as I am acquainted with the trade, I believe it is the largest business that is done by any single concern in the United States.

21 Q. Are you in the habit of issuing trade circulars?

A. We have for a number of years issued a trade journal; I think from 1874; we publish it twice a year certainly, and send it to all the trade, and all our customers, and to people that we think might become customers.

7

22 Q. Are the three papers which I hand you, respectively, copies of said trade journals?

A. Yes, sir; they are copies of the different issues of the Rubber Trade Journal.

23 Q. Is the same true of the copy annexed to the complaint?

A. Yes, sir; it is.

24 Q. And do these papers represent the general character of all of your issues of the publications?

A. They represent the general character of the publications since it was issued—since 1874, I think it was.

Three copies of the publication known as the Rubber Trade Journal offered in evidence and marked, respectively, Complainant's Exhibits Nos. 3, 4, and 5, Feb. 20th, 1883, J. A. S., examiner.

25 Q. You became connected with the rubber business, you say, at about what time?

A. In the year 1853.

26 Q. There were, at that time, other establishments engaged in this same business—corporations and individuals?

A. Yes, sir; several corporations and firms in the business.

27 Q. Are you able to state whether the names of any such corporations or firms, at that time and from that time on down to the

present, have employed the word "Goodyear" as a component part of their business names and titles?

A. In 1853 there were two concerns that used it, the Goodyear Metallic Rubber Shoe Company and the Goodyear's India Rubber Glove Manufacturing Company; several years later the Goodyear's Elastic Fabrics Company was organized; those three corporations I remember.

28 Q. Those are all that you have in mind at present?

A. Those are the only organizations I remember at present;

8 the name "Goodyear" was used in connection with establishments like the "Goodyear Rubber Emporium"—had been for some years; some years later, I think, a concern was called "the Goodyear Rubber Curler Company."

29 Q. Is the Goodyear's India Rubber Glove Manufacturing Company, to which you have referred, a company which is one of the defendants in this case?

A. It is.

30 Q. You have known of that company how long?

A. Since 1853.

31 Q. Was it carrying on business in this city at that time?

A. It was; yes, sir; in the city of New York.

32 Q. At what place?

A. The factories were at Naugatuck, Connecticut; the office, I think, was in John street, in this city.

33 Q. What was the general character of its business?

A. They manufactured and sold India-rubber gloves, mittens, and finger cots when I first knew the company.

34 Q. What changes has its business undergone, if any, from time to time in character since then?

A. Some years after it moved its business office to 205 Broadway, where they have continued ever since; several years later it established a branch at Broadway, corner of Broome street, and a year ago it moved from there to 503 Broadway.

35 Q. You have stated when you first knew it its dealings were limited to particular rubber articles. Has the character of its business undergone any change in respect to the goods in which it deals?

A. It still continues to manufacture and sell those articles, but it has increased its manufacturing to other articles, such as coats and shoes and quite a number of other articles.

36 Q. Engaging in the rubber trade substantially?

A. In the general rubber trade.

9 37 Q. Is its business in its general characteristics like your own?

A. It is very much like ours—of a similar character.

38 Q. Dealing in many of the same commodities?

A. Yes, sir.

39 Q. When you first knew the company, so far as you know, did it employ any other name in connection with its business than that of the Goodyear's India Rubber Glove Manufacturing Company?

A. It employed the name of the Goodyear's India Rubber Glove

Manufacturing Company until some time after the organization of the Goodyear Rubber Company.

40 Q. Did it employ the name "Goodyear's India Rubber Glove Manufacturing Company" exclusively, so far as you know?

A. So far as I know.

41 Q. Was it at any time known to the trade under any abbreviated title?

Objected to as leading and incompetent.

A. It was always and is now known to the trade by the abbreviated name of the Glove Company.

42 Q. When and how did the Goodyear's India Rubber Glove Manufacturing Company first employ any other name or names in connection with its business?

A. Within a year after the organization of the Goodyear Rubber Company the Glove Company put upon the side of their door a small sign reading, "The Goodyear's Rubber Manufacturing Company."

43 Q. Any of those words abbreviated?

A. No, sir; they were given in full.

44 Q. At what place of business was this?

A. At 205 Broadway; the sign still remains there. When they established the place at the corner of Broadway and Broome street they put up a similar sign there, on the side of the door, and over the door they had a sign printed, "The Goodyear's India Rubber Glove Manufacturing Company," putting the words "India" and "Glove" in very small letters. When they moved to 503 Broadway, a year ago, they put up a sign over their door, in large letters, "The Goodyear Rubber M'f'g Company." They have always continued the sign, "Goodyear's India Rubber Glove Manufacturing Company," but now in a small way and apparently obscure way.

45 Q. Since about a year ago?

A. Since about a year ago.

46 Q. Do you know the style and character of the bill and letter heads that have been employed from time to time by the Goodyear's India Rubber Glove Manufacturing Company?

A. Yes, sir; I am well acquainted with them and have bought goods from them for a good many years.

47 Q. Are the several papers which I now hand you copies of the letter and bill heads used by that company from time to time and at the times specified on the papers?

A. These four papers contain the style used by the Goodyear's India Rubber Glove Manufacturing Company at the dates which are mentioned in the four papers.

48 Q. Do they indicate the changes made in their style?

A. They indicate the changes made in their style from time to time.

The four papers offered in evidence and marked, respectively, Complainant's Exhibits Nos. 6, 7, 8, and 9, Feb. 20th, 1883, J. A. S., examiner.

49 Q. Have you had business dealings and contracting relations with the Goodyear's India Rubber Glove Manufacturing Company and your own company under your respective corporate names?

A. We have had dealings with them steadily for many years; made purchases from them and made contracts with them.

50 Q. Are the papers which are now handed you copies or originals of the contracts entered into between your respective companies?

A. These are original contracts that were made between
11 the Goodyear's India Rubber Glove Manufacturing Company and the Goodyear Rubber Company, and also with the Rubber Clothing Company.

Two contracts offered in evidence and marked, respectively, Complainant's Exhibits Nos. 10 and 11, Feb. 20th, 1883, J. A. S., examiner.

(It is understood that examined copies of these original contracts may be substituted.)

51 Q. So far as you know, who have been from time to time the business managers of the Goodyear's India Rubber Glove Manufacturing Company and its officers?

A. Mr. George M. Allerton, who was the president of the company until his death, a few months ago. Mr. John D. Vermeule has been the vice-president and managing man in New York for many years; he is now.

52 Q. State, if you please, what has been the effect upon your own business of the changes made from time to time by the Goodyear's India Rubber Glove Manufacturing Company in the style and title of its business, including its signs.

A. Since the important changes have taken place in their signs and printing it has done us a very great injury; it has led to confusion in correspondence; it has led to customers being mistaken in regard to the place where they were purchasers, and I have had occasion to know that many customers supposed they were buying goods of us when they were buying them at the Glove Company's place.

53 Q. Does that confusion increase or diminish with time?

A. Since the important changes in their signs it has increased very much, particularly in the last year, since the very important changes were made by them.

54 Q. Has it resulted in any difficulty or confusion at the post-office?

A. Yes, sir; a great deal of difficulty; our letters have been delivered to them; and, in some instances, letters intended for them have been directed to us—directed in our name.

12 55 Q. Has it gone so far as to attract the notice of the post-office authorities at any time?

A. Yes, sir; such complaints have been made that the postmaster at New York thought it necessary to establish a rule upon the subject, and gave us a copy of his decision and ruling in regard to the delivery of letters.

56 Q. Do the two papers which I now hand you contain those rules and regulations?

A. These are the papers which we received from the postmaster of the city of New York at the date mentioned in the letters.

Two letters offered in evidence and marked, respectively, Complainant's Exhibits Nos. 12 and 13, Feb. 20th, 1883, J. A. S., examiner.

57 Q. Be good enough to state such particular instances as may have come under your notice of confusion and mistakes in correspondence and in the delivery of letters and documents.

A. A great many letters directed to the Goodyear Rubber Company fall into the hands of the Glove Company and have been opened by them; and this letter, directed to the Goodyear Rubber Company, post-marked at Lambertville, N. J., Jan. the 12th, was delivered by the post office to the Goodyear's India Rubber Glove Manufacturing Company, was opened by them and sent to us, together with their letter under date of January 13th, 1881. We sent it to the postmaster of New York, and he returned us the papers, together with a note from him, dated February 2d, 1881. The letter was intended for the Goodyear Rubber Company and related to its business. Remittances of checks have also been sent to them by mistake. A case illustrating others is the case of a letter contained in the envelope directed to the Goodyear Rubber Company, post-marked at St. Louis, which went to the Glove Company, and the check was received by them and was sent to us finally by
13 the Glove Company under date of their letter of August 24th, 1880. A telegram, addressed to the Goodyear Rubber Company, from Montgomery, Ala., dated January 5th, 1880, also fell into their hands. Those are instances of a great number of cases which have occurred and do occur almost daily.

Letters offered in evidence and marked, respectively, Complainant's Exhibits Nos. 14, 15, 16, and 17, February 20th, 1883, J. A. S., examiner.

58 Q. Has the Goodyear's India Rubber Glove Manufacturing Company at any time issued circulars to the public on this subject of names and styles as between themselves and your own company?

A. Yes, sir; they have issued from time to time great quantities of notices of one sort or another.

59 Q. Are the two papers which I hand you specimens of such notices?

A. They are. They have sent such papers in great quantities to our customers and all over the country to the trade generally.

Objected to, as the witness is incompetent to testify as to the trade generally.

The two papers offered in evidence and marked, respectively, Complainant's Exhibits Nos. 18 and 19, February 20, 1883, J. A. S., examiner.

60 Q. I hand you a letter, under date of 490 Broadway, New York, June 4th, 1880, purporting to be addressed by Goodyear's India Rubber Glove Manufacturing Company to Messrs. T. H. Hinchman & Son, Detroit, and I ask you what subject and what occasion that letter refers to?

A. T. H. Hinchman & Son owed the Goodyear Rubber Company $133.56; they remitted a check for it, which was returned to them by this letter from the Goodyear's India Rubber Glove Manufacturing Company, dated June 4th, 1880, and the check, together with
14 this letter, were sent to us by Hinchman & Son, of Detroit. The notices that are now pinned to the letter came with it.

Offered in evidence and marked Complainant's Exhibits Nos. 20 and 21, February 20, 1883, J. A. S., examiner.

61 Q. Mr. Shepard, is there any pecuniary standard or measure by which the damages occasioned to the plaintiff company in consequence of the imitation of the name of the plaintiff can be ascertained?

Objected to, as no imitation of name has been shown on the part defendants.

A. We are unable to tell the amount of injury which has been done us. We hear of many cases where customers have supposed they have been buying of us and were not, but we have no way of measuring the damages in money.

62 Q. Have you any knowledge, except that afforded by the pleadings in this case, as to whether this style and title, the "Goodyear Rubber Manufacturing Company," represent anything more than a name?

A. I have no knowledge of its representing anything more, except what is stated in the pleadings.

63 Q. Have you any knowledge of efforts on the part of the Goodyear's India Rubber Glove Manufacturing Company or its agents, within the last few years, to obtain a corporate organization under a name similar to that of the Goodyear Rubber Company? If so, state the facts on that subject within your knowledge.

A. Last March, 1881, I was informed that application had been made to the Legislature of the State of Connecticut by the Goodyear's India Rubber Glove Manufacturing Company to add to their title or substitute for their title the Goodyear's Rubber Manufacturing Company. I went to Hartford and asked for a hearing before the committee on incorporations of the Legislature, then in
15 session. I found there was such an application and I did what I could to oppose the granting of it. The committee of the Legislature decided to reject the application and it was dismissed.

64 Q. Your opposition was successful?

A. Yes, sir.

65 Q. On that occasion did you present a memorial to the Legislature on the subject?

A. I did; yes, sir.

66 Q. Is the paper which I hand you a copy of it?

A. It is the copy of the memorial and papers that I presented to the committee on incorporation at Hartford.

Paper offered in evidence and marked Complainant's Exhibit No. 22, February 20th, 1883, J. A. S., examiner.

67 Q. Did it come under the notice of the agents of the Glove Company?

A. Their counsel, Judge Kellogg, of Waterbury, was present before the committee at the time this hearing was had.

68 Q. Is the paper which I now show you, No. 56, and called Price Current, a paper issued by the Goodyear's India Rubber Glove Manufacturing Company?

A. It is, as a trade circular. It imitates in shape, in style of print, and in head lines the paper which we have issued since 1874.

Trade circular offered in evidence and marked Complainant's Exhibit No. 23, February 20th, 1883, J. A. S., examiner.

F. M. SHEPARD.

Sworn before me—

JOHN A. SHIELDS,
*Examiner, &c.*

Adjourned to February 28th, at 11 a. m.

16 NEW YORK, *February 28th*, 1883.

Met pursuant to adjournment and adjourned to March 9th, at 11 o'clock a. m.

NEW YORK, *March 9th*, 1883.

Met pursuant to adjournment.

Present: Counsel as before.

FREDERICK M. SHEPARD cross-examined by Mr. BETTS:

1 X Q. Mr. Shepard, you say you have been engaged in manufacturing and selling India-rubber goods since 1853; what was your firm name or company at that time?

A. From 1853 to 1857 I was the secretary and treasurer of the Union India Rubber Company and a stockholder in the company. From 1857 to 1865 I was in business with my brother, under the firm name of F. M. & W. A. Shepard. Since then I have been president and stockholder in the Rubber Clothing Company and the Goodyear Rubber Company, and some part of the time of the Union India Rubber Company. All these concerns were engaged in the India-rubber business.

2 X Q. Were you also a member of the firm of Shepard & Dudley?

A. Yes, sir; a partner in the firm of Shepard & Dudley.

3 X Q. When was that firm organized and how long did it do business?

A. That firm succeeded F. M. & W. A. Shephard. The partnership began in somewhere between 1865 and 1867. My interest in

it continued until about, I think, five years ago; then I withdrew. The firm name is continued by Mr. Dudley alone since then.

17 4 X Q. You spoke of having been connected with the Rubber Clothing Company; what was your connection with that company?

A. I was for the first three years an agent of the company, from 1861 to 1863; since that time I have been a stockholder and president of it.

5 X Q. Do you mean that you have been president of the Rubber Clothing Company ever since 1863?

A. Yes, sir.

6 X Q. Was the Rubber Clothing Company engaged to any considerable extent in the manufacture and sale of rubber goods?

A. Yes, sir; it has been to a large extent.

7 X Q. Say, prior to 1870, what was the nature of the business of the Rubber Clothing Company, of which you were president, in regard to its extent and the variety of its manufactures?

A. Well, it had a place of business in the city of New York and kept and dealt in and bought and sold all sorts of India-rubber goods; they manufactured some sorts of rubber goods in the city of New York.

8 X Q. What sorts?

A. Blankets for one thing that I remember.

9 X Q. Anything else?

A. They made articles of tubing.

10 X Q. Anything else?

A. I think they made some coats—clothing—during that time.

11 X Q. Where was the manufactory of the Rubber Clothing Company?

A. Well, during all that time it was in places in the city of New York.

12 X Q. Did it continue its manufacturing and general dealing in rubber goods up to 1873?

A. Yes, sir; and has up to the present time.

13 X Q. And this Rubber Clothing Company, of which you were president, where was its place of business in the city of New York, in 1872 and the early part of 1873?

A. Well, it has occupied several stores close together, and I am unable to tell you at the moment what the number of Broad-

18 way was during those years, but I think it might have been 363 Broadway or 347 Broadway or 361 Broadway. It is possible it might have been also part of that time in the stores Nos. 365 and 367 Broadway.

14 X Q. Did this Rubber Clothing Company, of which you were then president, have any places in any other city?

A. It did, before 1870.

15 X Q. Did it not do so up to 1873?

A. Perhaps they did.

16 X Q. Had a place out in Chicago?

A. In Chicago.

17 X Q. Also in St. Louis?

A. I think they did not have one in St. Louis, but they might have had one.

18 X Q. Did they have one at 400 North Fourth street, St. Louis, in 1872 or the early part of 1873?

A. Well, it is possible they did, sir. I can't tell the dates exactly without referring to a memorandum.

19 X Q. And did they also have a place of business in San Francisco at that time?

A. They did before that time, sir.

20 X Q. Up to that time?

A. Up to about that time; somewhere from 1870 to 1873.

21 X Q. Was the place in San Francisco at 607 Market street?

A. I don't think it was in Market street then. I think it was in Montgomery street.

22 X Q. The business at all of these places of the India Rubber Company, which it had prior to 1873, was it a general business, dealing in all kinds of rubber goods which were then manufactured?

A. It did a general business in rubber goods at all the places where it had business.

23 X Q. Will you tell me who the officers and trustees of the Rubber Clothing Company were in the year 1872?

A. I cannot entirely without referring to the records.

24 X Q. State as near as you can.

A. Myself and Mr. Minot were certainly two.

19 25 X Q. Can you name anybody else?

A. I cannot without referring to the records.

26 X Q. What was Mr. Minot's full name?

A. Joseph A. Minot.

27 X Q. Was Mr. Melville Lindsay one?

A. He was at one time.

28 X Q. In 1872?

A. I am unable to fix the date.

29 X Q. What was Mr. Melville Lindsay's connection with the Rubber Clothing Company?

A. He was connected with it as salesman and manager.

30 X Q. Can you tell me how many trustees there were of the Rubber Clothing Company in 1872 and 1873?

A. Well, I cannot, sir, without reference to the record.

31 X Q. How many has it now?

A. Well, I think three or four. I think it has five, but I am not certain.

32 X Q. Can you name anybody who was a trustee or director of that company other than yourself, Mr. Joseph Minot, and Mr. Melville Lindsay?

A. Well, I think Harry H. Shepard was also; he is engaged in the Rubber Clothing Company now.

33 X Q. Is he a relation of yours?

A. He is a nephew of mine.

34 X Q. Now, prior to the first of January, 1873, your company, the Rubber Clothing Company, had been carrying on active business in dealing in rubber goods, had it not?

A. Yes, sir.

35 X Q. And were they competitors of the Goodyear's India Rubber Glove Manufacturing Company in business?

A. Well, they were in the same line of business.

36 X Q. They competed with them, did they not?

A. We sold goods and they sold goods. I am not aware of any other competition, except being engaged in the same line of business.

37 X Q. You were in competition?

20 A. We were engaged in the same line of business, but no other competition that I am aware of.

38 X Q. Were you aware that you were competing with them, trying to get trade?

A. We were in the same line of business—so were a good many other people—but we had no particular competition with the Goodyear's India Rubber Glove Manufacturing Company.

39 X Q. You seem to be reluctant to admit that you were competing with that company at that time?

A. Not in a special way. We were doing a general rubber trade and there were other people engaged in the same line.

40 X Q. You were competing with all these people?

A. Yes, sir; all of them.

41 X Q. The Goodyear's India Rubber Glove Manufacturing Company was doing the same kind of business that you were?

A. In 1872 they had begun to deal more extensively in the line of rubber goods than they had previously.

42 X Q. You knew of no limitation upon their business?

A. I do not think they did much in boots and shoes.

43 X Q. Well, aside from boots and shoes, did they do business in anything else?

A. I do not think they did very much in belting, packing, and hose. My personal knowledge on that subject is only general.

44 X Q. Aside from those exceptions that you have mentioned?

A. Their business was a general one. They dealt in a good many articles.

45 X Q. You remember, Mr. Shepard, in the year 1872, calling upon Mr. Vermeule and proposing a consolidation of business with his company?

A. Well, I don't, sir; I never proposed such a thing myself. The subject was discussed somewhat between Mr. Allerton and myself, but I am not aware that I ever had any conversation with

21 Mr. Vermeule in 1872; I might have had; but the conversations that I had largely on that subject were with Mr. Allerton.

46 X Q. You did have conversations with Mr. Allerton on that subject?

A. The subject was considered some.

46½ X Q. You refer to Mr. George M. Allerton, who was then president of the Goodyear's India Rubber Glove Manufacturing Company?

A. I do.

47 X Q. What was your proposition to him?

A. I don't think I made any proposition. I don't think there was any proposition made.

48 X Q. What was it that you suggested?

A. I don't think I suggested anything. I think we talked of the advisability of consolidation; whether it was best to be done; whether it was practicable. Whatever was done certainly never proceeded to any distinct proposition on either side.

49 X Q. Mr. Allerton declined to have anything to do with any such scheme?

A. No, sir; I think he introduced the subject. I think so because a circumstance that fixes that in my mind. He wanted me to join him in carrying on the business of manufacturing steam fire engines. He proposed that to me and urged me to join him in that—furnish capital for it; that did not proceed any further.

50 X Q. That was a matter relating to what was then known as the Allerton Iron Works?

A. That interest; yes, sir.

51 X Q. Did not you propose, both to Mr. Allerton and Mr. Vermeule, to consolidate the two companies?

A. I never made any such proposition.

52 X Q. You talked it over with him?

A. The subject, in a general way, was talked about.

53 X Q. It was declined on the part of the Goodyear's India Rubber Glove M'f'g Co., was it not?

A. It was not proposed.

54 X Q. Declined to entertain any such suggestion?

A. It was dropped on both sides.

22 55 X Q. This talk occurred prior to the organization of this company spoken of, called the Goodyear Rubber Company, was it not?

A. Well, I am unable to tell you whether it was all before that or whether it extended after.

56 X Q. It was talked of before, at all events?

A. Well, I think likely it was before; yes, sir.

57 X Q. Now, when you organized this Goodyear Rubber Company all the people who organized that company were connected with the Rubber Clothing Company, were they not?

A. Are the names of the original incorporators there?

58 X Q. Yes, sir; F. M. Shepard, Joseph A. Minot, and Melville Lindsay.

A. Well, myself and Mr. Minot certainly were. Whether Mr. Lindsay was at that time interested in the Rubber Clothing Co. I do not know.

59 X Q. You don't know to the contrary, do you?

A. I don't know whether his interest ceased then or not. It has ceased.

60 X Q. Can you name anybody besides the three persons whose names I have mentioned who were concerned in the organization of the Goodyear Rubber Company?

A. Yes, sir; George Clapp, George B. Thompson, Joseph Frazser.

61 X Q. When did the parties that you have last mentioned come into the so-called Goodyear Rubber Company?

A. As soon as it commenced business.

62 X Q. And were those people also connected with the Rubber Clothing Company?

A. No, sir; they had no interest in the Rubber Clothing Co.

63 X Q. Did you ever have any subscriptions for stock in the so-called Rubber Clothing Company?

A. Yes, sir.

64 X Q. Did you ever pay in stock?

A. Yes, sir.

65 X Q. Have you got any stock books?

A. We have files that are equivalent to books.

23 66 X Q. Ever pay in any cash on the stock?

A. Yes, sir.

67 X Q. How much?

A. I am unable to tell you just now without reference to the books themselves.

68 X Q. Have you got possession of the books?

A. Yes, sir.

69 X Q. What led you to organize the so-called Goodyear Rubber Company?

A. Well, we thought it was an advisable thing for us to do.

70 X Q. Who advised it?

A. All those people that were interested, that I have mentioned, and, perhaps, some others.

71 X Q. Won't you tell me what the basis of that advice was?

A. Well, it put things in better shape, we thought, for the business that we were doing.

72 X Q. Intended merely to retain the business that you were doing?

A. It was intended to increase the business—add some business.

73 X Q. What was the capital of the Rubber Clothing Company at that time?

A. I think the capital of the Rubber Clothing Company was $5,000.

74 X Q. What was the capital of the Goodyear Rubber Company?

A. It was fixed at $500,000.

75 X Q. And how was it made up?

A. It was paid in in money.

76 X Q. The whole $500,000?

A. Yes, sir.

77 X Q. In cash?

A. Yes, sir.

78 X Q. Do you mean to say that the capital of the Rubber Clothing Company, at the time of the organization of the Goodyear Rubber Company, was only $5,000?

A. That was the amount that was fixed in its articles of incorporation; it has not been changed.

79 X Q. What was its actual capital?

A. The capital that it employed in its business was very much more.

80 X Q. How much more?

A. Several hundred thousand dollars, I suppose.

24 81 X Q. Was there any transfer of property from the Rubber Clothing Company to the Goodyear Rubber Company?

A. The Goodyear Rubber Company bought the stock of goods of the Rubber Clothing Company at several places.

82 X Q. What places?

A. At Chicago and at San Francisco; I am unable to say about St. Louis; I was under the impression that the Rubber Clothing Company never had any place in St. Louis, but perhaps they had. The dates are a little indistinct in my mind. The St. Louis business, the goods and merchandise there, was bought originally of H. G. Norton & Co., and my impression is that the Goodyear Rubber Company bought them of H. G. Norton & Co., but that is a matter of dates.

83 X Q. How was this purchase effected?

A. Well, inventories were made out.

84 X Q. Did they transfer any of the property in New York from one company to another?

A. No, sir.

85 X Q. Both these companies had business in the same store in New York?

A. We did business at the same place.

86 X Q. Do they not have their business at the same place, to a considerable extent, now?

A. The Goodyear Rubber Company has other places of business of its own.

87 X Q. And has the same place of business as the Rubber Clothing Company?

A. No, sir.

88 X Q. Since when has there been any separation of business?

A. For the last five or six years the Goodyear Rubber Company have had separate places of business.

89 X Q. They have also had the same places of business, have not they?

A. They have had an office at the same place always.

90 X Q. They kept separate books?

A. Yes, sir.

91 X Q. Separate bank accounts?

A. Yes, sir.

92 X Q. They always kept a separate bank account?

25 A. Well, I think they have for the last five or six years; they have always at some places. The Goodyear Rubber Company have always had their own bank account from the beginning of their business, and they have had a separate bank account in New York for the last five or six years, certainly.

93 X Q. The first five years, then, in New York, the two companies had the same bank account?

A. Well, for the first few years the Goodyear Rubber Company in

New York kept their account with the Rubber Clothing Company; deposited what money they received with the Rubber Clothing Company.

94 X Q. The same people were managing both, were they?

A. To some extent; yes, sir.

95 X Q. Was there any difference in the management for the first five years?

A. In the city of New York there were some people interested in the business of the Goodyear Rubber Company that were not interested in that of the Rubber Clothing Company; the officers were the same. I was president and Mr. Minot was secretary of both companies.

96 X Q. Do you mean to say when the Goodyear India Rubber Company first started business it opened a separate set of books?

A. I do.

97 X Q. Kept separate sales?

A. Yes, sir.

99 X Q. Did they do any different business from the Rubber Clothing Company?

A. Yes, sir.

100 X Q. What was the class of business?

A. They manufactured and sold tubing of various sorts—gas tubing. They sold and carried on the manufacture of enameled oil-cloths.

101 X Q. Didn't the Rubber Clothing Company do the same thing?

A. No, sir.

102 X Q. Anything else besides tubing and enameled oil-cloths that the Goodyear Rubber Company did that the Rubber Clothing Company did not do?

A. Yes, sir; the Goodyear Rubber Company manufactured boots and shoes.

103 X Q. And did not the Rubber Clothing Company?

A. No, sir.

26 104 X Q. Did they sell boots and shoes?

A. Yes, sir.

105 X Q. Did the Rubber Clothing Company sell gas tubing?

A. Not of the patented sort.

106 X Q. What do you mean by that?

A. Not of the sort that the Goodyear Rubber Company made.

107 X Q. What was the sort that the Goodyear Rubber Company made?

A. It was a patent gas tubing.

108 X Q. Whose patent?

A. Taylor's patent.

109 X Q. The Rubber Clothing Company never dealt in that?

A. No, sir; they did not after the Goodyear Rubber Company was organized.

110 X Q. Now, these oil-cloths—what kind of oil-cloths were they—floor cloths or carriage cloths or what?

A. They were carriage cloths, upholstered cloths, table covers, and stair cloths.

111 X Q. Were they enameled cloths?

A. Some of them were.

112 X Q. After the Gooodyear Rubber Company was organized the Rubber Clothing Company never dealt in those goods?

A. No, sir; they never dealt in those goods.

113 X Q. When was the Goodyear Rubber Company organized?

A. Well, I think the certificate of incorporation was filed in November, 1872, and they commenced business early in 1873.

114 X Q. How early in 1873?

A. Well, sir, in the spring—early part of the year.

115 X Q. How early in the spring?

A. It was sometime before June; some time before May, I think.

116 X Q. Was it any earlier than May?

A. It was somewhere from January on, in the early spring.

117 X Q. Please state the earliest date you can swear to when the Goodyear Rubber Company commenced business?

A. I think, certainly as early as May, 1873.

27 118 X Q. Now, these departments of business that you speak of as having been done by the Goodyear Rubber Company, and not by the Rubber Clothing Company—had the Rubber Clothing Company been doing those parts of business before?

A. No, sir; they had not, all of them.

119 X Q. Had they been dealing in this enameled cloth before, or was that a new business of the Goodyear Rubber Company?

A. That was a new business.

120 X Q. How about the Taylor patent gas tubing?

A. That had been carried on for several years before, and I think the Rubber Clothing Company had sold the tubing before that.

121 X Q. What was the arrangement on which this part of the business was turned over to the Goodyear Rubber Company—I mean the business in dealing in enameled cloths and this patent gas tubing?

A. The Goodyear Rubber Company bought the patent for making the patent gas tubing, and bought the machinery that was necessary to make it; bought also what there might have been on hand. That was done in the early part of 1873. The enameled cloth goods were bought of the Eastern Manufacturing Company of Elizabethport, New Jersey, and the Goodyear Rubber Company had the agency of the factory for awhile, and then carried on the factory for themselves for awhile The boots and shoes the Goodyear Rubber Company manufactured at Middletown, Connecticut, in the factory they hired there.

122 X Q. When did they hire that?

A. Well, I think they hired that in 1875.

123 X Q. Look at this paper and see if that is a catalogue issued by you in May, 1873?

A. Yes, sir; issued by Shepard & Dudley.

124 X Q. Was that printed and published at that time?

A. Yes; I believe it was

28 125 X Q. You find there a prominent advertisemont of the Rubber Clothing Company, do you not?

A. Yes, sir.

126 X Q. That advertises both the enameled cloth and Taylor's patent tubing for sale, does it not?

A. It did in May, 1873.

127 X Q. That was a new issue at that time, was it not?

A. Yes, sir; the book was issued probably about that time; it might have been issued a few weeks before the date that is on here.

128 X Q. It might have been issued a few weeks after?

A. No; it was issued before, if at all.

129 X Q. The Rubber Clothing Company did sell both the patent gas tubing and the enameled cloth?

A. Yes, sir; then.

130 X Q. Then your evidence is not true that you gave before?

A. The changes I speak of were made in the early part of 1873.

131 X Q. You testified that the Rubber Clothing Company never dealt in enameled cloth?

A. No, sir; I said it did; but I said the Goodyear Rubber Clothing Company dealt in them, and had them from this factory in Elizabethport. The Rubber Clothing Company used to buy and sell them; I think they were never engaged in manufacturing them.

132 X Q. The Rubber Clothing Company were selling Taylor's gas tubing?

A. They did, before the business was turned over to the Goodyear Rubber Company.

133 X Q. Then the Goodyear Rubber Company hadn't taken that business as early as May, 1873?

A. Apparantly not.

134 X Q. Can you say, in view of this date, that they had taken that business as early as May, 1873?

A. Apparently, by that advertisement, not as early as May, 1873.

135 X Q. And you would judge from that advertisement and the absence of any advertisement of the Goodyear Rubber Company that they had not commenced business as early as May, 1873?

29 A. They had commenced business as early as May, 1873, but as to what extent I should have to refer to memorandum.

136 X Q. Can you tell me what they had commenced?

A. I think they had commenced the manufacture of this tubing as early as May, 1873, but they had not completed their arrangements for selling.

137 X Q. Can you swear to that?

A. I think they did. I should need to refer to the books to verify it.

138 X Q. Do you swear that they commenced any business as early as May, 1873?

A. Yes, sir; they did.

139 X Q. Will you please swear what particular business they were doing.

A. The books will show. I am unable to tell from recollection what, at this time.

140 X Q. You can't swear to anything they were doing as early as 1873?

A. I know they organized. I know they made some negotiations about this gas tubing in the early part of 1873?

141 X Q. I ask you if you can swear to their doing any particular thing as early as May, 1873, from your present recollection.

A. Yes, sir; I think they were manufacturing gas tubing at that time.

142 X Q. I don't ask you what you think; I ask if you will swear that they were doing any particular business as early as May, 1873?

A. I shall want to refer to the books in order to fix the date.

143 X Q. You can't swear about it, then?

A. I believe they were, sir.

144 X Q. Can you swear to it?

A. To the best of my knowledge and belief, they were manufacturing gas tubing as early as May, 1873, but they were not prepared to sell it.

145 X Q. That is the only thing, then, that you think of?

A. Yes, sir.

30 146 X Q. You don't answer very definitely as to what the reasons were that induced you to organize this Goodyear Rubber Co. You state you thought it was advisable. Won't you give us in detail the reason which led you to organize the Goodyear Rubber Company?

A. Well, sir, we proposed to do a more general business than we had at any time done before, and we thought that the name under which we had done some of this business at those western places seemed to limit the business to a particular line of goods, so we were considering choosing a name that would be more general in its character. That was the line of reasoning.

147 X Q. So that the main reason for organizing this Goodyear Rubber Company was to get the advantage of the name of Goodyear?

A. No, sir.

148 X Q. What was it?

A. To commence business in a different line of business from what we had been engaged in, and to choose a name that should be applicable to a general business.

149 X Q. Why did you select the name of the Goodyear Rubber Company?

A. Because we thought, under all the circumstances, it was as good as any other we could think of.

150 X Q. Why did you pick that particular one out?

A. For that reason.

151 X Q. Can't you be more definite than that?

A. That was the reason exactly.

152 X Q. Can't you give any more definite answer than you have now given?

A. I am unable to see how I can.

153 X Q. Now, what was there about the name that rendered that particular name desirable to you?

A. Now, I think of it, I can. We had some licenses from Chas. Goodyear to manufacture some rubber goods—I remember that now—and we had thought of manufacturing those goods.

154 X Q. What was it in the name that you selected that was particularly desirable to your business—the name of Goodyear particularly desirable?

31 A. Well, it was, as I said, a general name that applied to all branches of the India-rubber business, and we thought it was as good a combination as any as we could think of.

155 X Q. Did you expect to get any advantage from the use of the name "Goodyear?"

A. Not any particular advantage.

156 X Q. Has that part of the name been of any advantage to your business, do you think?

A. Well, I don't know that it has, particularly; it may have and it may not.

157 X Q. You could not say that the name of Goodyear is of any value to your business?

A. I don't know that it does any harm or good.

158 X Q. How about the name of "Rubber;" did you expect to get any particular advantage from using that?

A. The three words designated, as we thought, the general character of the business that we proposed to do—Goodyear, Rubber, and Company.

159 X Q. Was there any advantage in the word "Rubber," do you think?

A. No; except as it designated the business.

160 X Q. You had already been using "Rubber" in your previous concern?

A. It was used in concerns that dealt in and manufactured rubber goods.

161 X Q. You, yourself?

A. Yes, sir.

162 X Q. I don't suppose you attached any importance to the word Company, did you?

A. Of course we could not do business without a name.

163 X Q. Well, did you attach any importance to calling yourself by the name of the Goodyear Company at the time you adopted it?

A. We did not adopt that name.

164 X Q. Did you attach any importance to that part of that name—the word Goodyear in connection with Company?

A. We thought it would be a suitable name to the business we proposed to do.

32 165 X Q. Did you attach any importance to the word "Goodyear" in connection with Company, as distinguished from any other word that you might have adopted?

A. It indicated that we dealt in goods which were manufactured under the process of Charles Goodyear.

166 X Q. Aside from that, was there any peculiar significance in the name?

A. Well, it seemed to be appropriate to the line of goods which we were dealing in.

167 X Q. Has the use of the word "Goodyear" in connection with the name "Company" been of advantage to your business?

A. Well, I am unable to tell you.

168 X Q. Do you think that there is anybody that could tell better than yourself?

A. I don't know how that is, I am sure.

169 X Q. Can you mention anybody that could?

A. I have no name to mention.

170 X Q. You say that "we" determined to adopt this name; who was the "we" that settled on this name?

A. Well, sir, it is all those people that I have mentioned.

171 X Q. Will you please to state the names of all those who were instrumental in adopting this name?

A. Mr. Minot, Mr. Clapp, Mr. Thompson, and Mr. Frazser; those are the prominent names that I remember—Mr. Coe, perhaps.

172 X Q. I suppose you had nothing to do with selecting the name?

A. Yes, sir; I talked with the others about it.

173 X Q. Who suggested this name, do you remember?

A. I don't remember that it was suggested by anybody or by whom it was suggested.

174 X Q. It was suggested by somebody, I presume?

A. It came out somehow; yes, sir; a good many names were considered.

175 X Q. Do you remember, almost immediately on the adoption of this name, of being called upon by Mr. Vermeule in refer-
33 ence to it, from the India Rubber Glove M'f'g Company?

A. No, sir; I don't.

176 X Q. Do you remember Mr. Vermeule calling upon you and protesting against the use of this name as an interference with their business?

A. No, sir.

177 X Q. Don't you remember your telling him that they had driven you to it by refusing to consolidate with you?

A. No, sir.

178 X Q. Did he tell you that you might just as well say a man was driven to commit burglary because the person whose money he wanted would not give it to him?

A. I have no recollection of ever having any conversation with Mr. Vermeule on this subject at all.

179 X Q. Do you think of anything that could be called a conversation on this subject?

A. Not immediately after the organization of this company.

180 X Q. Do you think that is a perfect blank in your mind?

A. I say I think I had no conversation with him on this subject.

181 X Q. Did you have a conversation with Mr. Allerton about this matter?

A. Well, there may have been some conversation with Mr. Allerton.

182 X Q. Mr. Allerton protested against the use of this name, did he not?

A. He wrote a letter, I remember, which was sent to me when I was in California, which was a letter saying that he did not think we ought to use this name.

183 X Q. Have you got that letter?

A. I don't remember whether I have or not.

184 X Q. When was it you were in California?

A. I think it was some time in 1873.

185 X Q. Early in 1873?

A. Well, I think I left there in July.

186 X Q. It was in the Spring of 1873?

A. It was in the first half of 1873.

187 X Q. Do you remember how early you went to California?

A. It might have been in May.

188 X Q. After looking at this advertisement which I
34 showed you, of May, 1873, do you now state that the Rubber Clothing Company had places of business, at that time, in New York, Chicago, St. Louis, and San Francisco?

A. They appear to have had; yes, sir.

189 X Q. You have no doubt that is the fact, have you?

A. The change was made. That was part of my business in California, and it happened in 1873.

190 X Q. Now, you speak about the change being made; do you mean that those places of business in those other cities were turned over to the so-called Goodyear Rubber Company?

A. They were sold to the Goodyear Rubber Company and the Goodyear Rubber Company continued business at all those places except New York.

191 X Q. Then the Rubber Clothing Company did no more business at those points?

A. They did no more business at those points.

192 X Q. And in New York the companies had their offices together and with a single bank account for a number of years?

A. Yes, sir.

193 X Q. How long?

A. I cannot say.

194 X Q. Five years?

A. I cannot say.

195 X Q. Four years?

A. I cannot say.

196 X Q. Three years?

A. Possibly two years; possibly three years.

197 X Q. A few moments ago you said that they had separate bank accounts for the last five or six years?

A. I am stating from memory now what happened some time ago and I need to refer to the books.

198 X Q. You don't pretend to be accurate in dates to within but two or three years?

A. It was some time ago; I can't pretend to be without reference to the books; I am stating from memory the best I can now.

199 X Q. Will you please state, in answer to my question, whether you now pretend to be any more accurate in regard
35 to dates than to state the time within two or three years?

A. Some dates I can fix exactly and some I cannot.

200 X Q. Can you fix the time within five years?

A. No, sir.

201 X Q. Will you please fix it within two?

A. I think they always had bank accounts from 1873, in those places, in their own names. I think they had separate bank accounts in New York for three years from the time of the organization of the Goodyear Rubber Company, and probably before.

202 X Q. Have you got the books which will enable you to settle all these points?

A. I suppose we have.

203 X Q. I understand you to claim in your complaint in this case that there is a species of trade-mark in the name of your company; do I understand you correctly?

Complainant's counsel objects to the question on the ground that the complaint speaks for itself.

A. The name has become of value to us, and we did make application for a trade-mark to the United States Patent Office at the time they were granting trade-marks.

204 X Q. What was the fate of your application?

A. The company had not been organized long enough. I think the law only applied to companies that had been organized a little longer.

205 X Q. The application was rejected, then?

A. The trade-mark was not issued for that reason.

206 X Q. Do you pretend to state that was the reason for its rejection?

A. Yes, sir.

207 X Q. Will you swear to that?

A. I think that is the information which we received from Washington.

208 X Q. You swear to that?

A. I think so.

209 X Q. Did anybody on the face of the earth inform you that was the difficulty?

A. I think so; I think Mr. Pollock informed me.

36 210 X Q. You never succeeded in registering any such trade-mark?

A. We didn't for Goodyear Rubber Company.

211 X Q. You have not answered my question. Do you claim that there is a species of trade-mark in the use of the name of your company. Please answer that.

A. Yes, sir.

212 X Q. Will you tell us exactly what it is that you think you are entitled to exclusive use of in your name, of the words Goodyear Rubber Company? Do you mean that you are entitled to those words, however used?

A. Just in the order in which they are used.

213 X Q. Do you claim anything more than that?

A. No, sir.

214 X Q. If any other words are added to them, do you claim that that is your trade-mark?

A. No, sir.

215 X Q. So that, in order to interfere with your trade-mark, it must be the use of your exact words—nothing more and nothing less?

Complainant's counsel instructs the witness not to answer the question, as it is a question of law.

216 X Q. And you knew, before you adopted that name, that both "Goodyear's," "Rubber," and "Company" had been used in the title of the Goodyear's India Rubber Glove M'f'g Company, did you not?

A. We knew that the Goodyear's India Rubber Glove M'f'g Company were in existence.

217 X Q. And they used, in their corporate title, every single word which was used in your title, did they not?

A. They used the words which composed that title.

218 X Q. So that your name was a selection of certain words out of their name?

A. No, sir.

219 X Q. What was it, then?

A. It was a combination of these words. There were other
37 companies using the words "Goodyear's" and "Rubber" and "Company" as well as the Goodyear's India Rubber Glove M'f'g Company.

220 X Q. Will you please state what other companies were using Goodyear, Rubber, and Company.

A. The Goodyear's Metallic Rubber Shoe Company, The Goodyear Elastic Fabric Company, The Goodyear Rubber Emporium—did not use the word Company, though.

221 X Q. What others?

A. I don't at the moment remember any other.

222 X Q. The Goodyear Rubber Works had also been using it, had they not, before you adopted the name "Goodyear Rubber Company?"

A. The Goodyear Rubber Works had been using it.

223 X Q. Who used the name "Goodyear Rubber Works?"

A. Mr. D. Hodgman.

224 X Q. He was, prior to 1873, quite a prominent dealer in rubber goods in New York city?

A. Yes, sir.

225 X Q. And he had used this name of Goodyear Rubber Works prior to 1872, had he not?

A. He had used it and had dropped it.

226 X Q. Who was the party who had been using the name of the Goodyear Rubber Emporium?

A. It was a Mr. Gatchel.

227 X Q. Was he a dealer in rubber goods generally?

A. He was.

228 X Q. Do you claim, Mr. Shepard, that the use by the Goodyear's India Rubber Glove M'f'g Company of their name with the India Rubber Glove abbreviated to its initial letters, so that it reads Goodyear's I. R. G. M'f'g Co., or Goodyear's I. R. G. Company, interferes with your alleged trade-mark and does you any damage in your business?

Mr. MACFARLAND: I object to the question because it assumes a fact that I do not understand the witness to have assented to. He has not designated the name of his company as a trade-mark.

38 A. I think such an abbreviation is designed to imitate the name of the Goodyear Rubber Company.

229 X Q. Do you regard such a name and its abbreviated forms as substantially your name?

A. No, sir; it is not our name.

230 X Q. Do you regard it as substantially your name?

A. I regard it as an attempt to imitate our name.

231 X Q. Do you regard it as so substantially like your name as to interfere with your business or to cause any confusion to the trade?

A. Well, I have never complained of their use of it in that way.

232 X Q. Do you not regard that as an invasion of your rights?

A. We never complained of that.

233 X Q. Do you now complain?

A. No, sir; we do not now complain.

234 X Q. Did you regard the use by the Goodyear's India Rubber Glove M'f'g Company of their name, printed in such shape that the words "India" and "Glove" are in small letters, leaving the words "Goodyear's" "Rubber" "M'f'g" "Company" as prominent words in the title, as any interference of any rights of yours?

A. We regarded that as another attempt at imitation, but have made no complaint of it.

235 X Q. Don't make any complaint now?

A. No, sir.

236 X Q. Do you think that that way of using the name creates any confusion in the trade?

A. It creates some confusion, but we had thought it did them more harm than it did us.

237 X Q. Did it do you any harm?

A. It has created some confusion.

238 X Q. But is it not a matter of which you complain?

A. No, sir.

239 X Q. In other words, I understand you to think that the name Goodyear's India Rubber Glove M'f'g Company, with the words "India" and "Glove" very small, is substantially the

39 same as your name, or substantially different from your name?

A. We think it an imitation of our name and it creates some confusion, but we do not complain of it. It is not our name.

240 X Q. Did you regard it as substantially your name?
A. It is an imitation, we think, of our name to some extent.
241 X Q. Did you regard it as substantially your name?
A. No, sir.
242 X Q. You never have regarded it as substantially your name?
A. No, sir.
243 X Q. Suppose the name of the Goodyear's India Rubber Glove M'f'g Company was used with only the initial letters of the words "India" and "Glove," and all the rest of the words prominent. Did you regard that as substantially your name?
A. No, sir; it is not our name.
244 X Q. Is it substantially your name?
A. We considered it to be an imitation to some extent.
245 X Q. I want to know if you regard it as substantially the name of your company?
A. It is not our name.
246 X Q. Please answer my question. Is it substantially the same name as that of your company, for certain purposes?
A. It is not our name. I suppose that includes the answer to your question.
247 X Q. Will you please answer, in the words of my question, whether you regard it as substantially your name or not?
A. So far as I understand, it is not.
248 X Q. You have known of the Goodyear's India Rubber Glove M'f'g Company using their name on their places of business in this form, have you not, with the words "India" and "Glove" in very small letters or only in the shape of the initial letters?
A. They have such signs up.
249 X Q. How long have you known that they were using such signs?
A. Well, sir, for several years.
250 X Q. Can't you be more specific than that?
A. I should say five or six years.
251 X Q. No longer than that, do you think?
A. I am unable to fix the time from memory.

Counsel for the Goodyear's India Rubber Glove M'f'g Company requests the witness to produce at the next hearing the following books and papers:

The original subscription paper, if any, to the stock of the Goodyear Rubber Company.
The first stock certificate books of the Goodyear Rubber Company.
Any and all instruments of transfer of property from the Rubber Clothing Company to the Goodyear Rubber Company, and inform himself of the date when a separate bank account was started by the Goodyear Rubber Company in New York, with the name of the bank or banks in which the same was so started.

F. M. SHEPARD.

Sworn before me—

JOHN A. SHIELDS,
*Examiner, &c.*

Counsel for the Goodyear's India Rubber Glove M'f'g Company offers in evidence catalogue of Shepard & Dudley of May, 1873, bearing the advertisement of the Rubber Clothing Company of that date, which was identified by the witness and is marked Defendant's Exhibit Clothing Company, 1873, advertisement.

March 9th, 1883.

J. A. S., *Examiner.*

Adjourned to March 15, 1883, at 11 o'clock, a. m.

41 NEW YORK, *March 15th*, 1883.

Present: Counsel as before.

Cross-examination of FREDERICK M. SHEPARD resumed by Mr. BETTS:

252 X Q. You said, at the last examination, that your impression was that the Goodyear Rubber Company bought the St. Louis business of H. G. Norton & Co.; is that still your recollection?

A. No, sir; I find that the Rubber Clothing Company bought out H. G. Norton & Co., in 1872, and sold to the Goodyear Rubber Company in 1873.

253 X Q. At the last examination I was asking you some questions in relation to the essential characteristics of the name that you claim in this suit to have been interfered with by the defendants; do you consider the use of the name "Goodyear's I. R. G. M'f'g Co." or "Goodyear's I. R. G. Co." as an imitation of your name?

A. I consider it an attempt at an imitation of our name.

254 X Q. Do you consider it such a mere resemblance to your name that there would be likelihood of confusion in the trade between the two names?

A. Well, the more the concealment of the I. R. G. Co. proceeds, the greater the confusion.

255 X Q. What I want to know is whether you consider the names Goodyear Rubber Company and Goodyear's I. R. G. Co. so nearly alike that the use of one would be apt to be taken for the other in the trade?

A. Well, it depends a great deal upon the manner in which the Goodyear's I. R. G. M'f'g Co. is written or printed; if it is printed in very fine type, why, it creates confusion—has done; if written in larger type and in a bold, plain way, it don't make so much trouble.

256 X Q. Suppose the only full names used were the words
42 "Goodyear's" and "Company," and the I. R. G. were mere initials, do you consider the use of such a name as that as so nearly resembling the name Goodyear Rubber Company that one would be mistaken for the other, in the trade?

A. It can be written and has been written in such a way as to make a great deal of confusion.

257 X Q. I am asking you a specific question as to a specific name; what I want to know is whether you regard the name Good-

year Rubber Company used by your company as so nearly like the names The Goodyear's I. R. G. Co. or I. R. G. M'f'g Co., the capital letters I. R. G. being the same size as the capital of the word Goodyear's, as an imitation one of the other, or as so nearly resembling as to create confusion in the trade and likely to do damage?

A. The abbreviation of the name of the Goodyear's India Rubber Glove M'fg Co. has always created confusion, more or less.

258 X Q. Do you regard the two names as so nearly alike as to be an interference with each other?

A. Yes, I do.

259 X Q. How long have you known of the Goodyear's India Rubber Glove M'f'g Co. being called in business transactions by the abbreviated names "Goodyear's I. R. G. Co." or "Goodyear's I. R. G. M'f'g Co.?"

A. The abbreviated name that I have always heard it called by was the Glove Company; I never heard it called by the other abbreviation in the trade.

260 X Q. Don't you know that it has been very often called by that abbreviated name in transactions for many years?

A. No, sir; I never heard that called by that name in transactions.

261 X Q. How long have you been accustomed to have dealings with the Goodyear's India Rubber Glove M'f'g Co.?

A. For nearly thirty years.

262 X Q. (Handing witness paper.) Won't you look at
43 that bill and state if that is a bill rendered by your own concern to the Goodyear's India Rubber Glove M'f'g Co. in 1865?

A. Yes, sir; it was rendered by F. M. & W. A. Shepard.

263 X Q. Your own concern, as early as 1865, then, addressed them by the name of the Goodyear's I. R. G. Co.?

A. In making out bills in that way there is a great variety of abbreviations when written by a clerk.

Defendants' counsel reads bill which has been identified by the witness in evidence as follows:

NEW YORK, *June* 13, 1865.

F. M. & W. A. Shepard. F. D. Dudley.

Goodyear I. R. G. Co. bought of F. M. & W. A. Shepard, wholesale dealers in rubber goods of every description, 150 William street.

Manufacturers of the Goodyear syringes. Sole agents for Morey & Smith's and Richardson syringes.

| | |
|---|---|
| ½ doz. 5 syringes, $22.50 | $11 25 |
| | 1 12 |
| 10 & 6 | $10 13 |
| | 61 |
| | $9 52 |

J. C. W.

The same is marked Defendants' Exhibit F. M. & W. A. Shepard 1865 Bill, March 15th, 1883, J. A. S., Ex'r.

264 X Q. Look at this bill (handing witness paper), the
44 Rubber Clothing Company, addressed them in the same way in 1865.

A. Yes; that is a bill of the Rubber Clothing Company in 1865.

Defendants' counsel reads the bill identified by the witness in evidence as follows:

NEW YORK, *Jan'y* 18, 1865.

F. M. Shepard, pres't. J. A. Minott, sec'y.

Goodyear's I. R. G. Co. bought of The Rubber Clothing Co., manufacturers of rubber clothing, army blankets, knapsacks, carriage cloth, etc., dealers in all kinds of rubber goods, boots and shoes, gloves, hard rubber goods, fancy-colored balls, syringes and druggists' articles, hose, enameled cloths, &c.

—— cases.
—— bales.
—— bundles. Forwarded by —— ——.

| | |
|---|---|
| 1,008 feet $\frac{3}{16}$ tubing, .17 | $171 36 |
| 30 feet 6 in. 3-ply belt, .87 | 26 10 |
| $\frac{1}{2}$ doz. 3 cement, 6.00 | 3 00 |
| | $300 46 |
| 20 % | 60 09 |
| | $240 37 |
| 6 % | 14 42 |
| | $225 95 |

E. M. B.

The same is marked Defendants' Exhibit Rubber Clothing Co. 1865 Bill, March 15th, 1883, J. A. S., Ex'r.

266 X Q. Do you recognize the handwriting on those two bills?

A. Well, no, sir; I do not. We have had a great number of clerks.

45 267 X Q. At the last examination you mentioned having received, in the early part of 1873, a letter from Mr. Allerton, president of the Goodyear's India Rubber Glove Manufacturing Company, protesting against your use of the name Goodyear Rubber Company. Have you been able to find that letter?

A. No, sir; my remembrance of the letter is that it was not a protest against the use of the name. I do not know where the letter is.

268 X Q. Do you think you would recognize the letter if you could see a copy of it?

A. Well, I might.

269 X Q. Won't you look at the press copy of the letter in the letter book I now hand you and say if that is the letter you received at that time?

A. That is the letter which I mentioned.

Defendants' counsel offers the copy of letter in evidence and, for the purpose of making a record thereof, reads it in evidence as follows:

MAY 7, —3.

The Rubber Clothing Co., 366 Broadway, N. Y.

GENT'M.: We have been long known and understood by people generally to be the Goodyear's Rubber Company, and we must protest against your adoption of that name at this late day as tending to deceive the public and injuring us in our business. We have to request that you cease styling yourself the Goodyear Rubber Company and return to your true name. We sincerely trust you will at once see the propriety of this course.

Yours, etc.,

(Signed) GEORGE M. ALLERTON,
*Pres't Goodyear's India Rubber Glove M'f'g Co.*

46 270 X Q. Have you produced here to-day the original subscription paper, if any, to the stock of the Goodyear Rubber Company called for at the last hearing?

A. I decline to produce it.

271 X Q. Have you produced here to-day the first stock certificate books of the Goodyear Rubber Company called for at the last hearing?

A. I decline to produce those.

272 X Q. Have you produced here to-day any and all instruments of transfer of property from the Rubber Clothing Company to the Goodyear Rubber Company called for at the last hearing?

A. I decline to produce them.

273 X Q. Have you informed yourself of the date when a separate bank account was started by the Goodyear Rubber Company in New York?

A. A bank account was begun by the Goodyear Rubber Company in the Merchants' Bank Jan. 22d, 1875, and in the Ninth National Bank September 1st, 1875, and in Buffalo and other places earlier.

274 X Q. Have you ascertained whether Mr. Melville Lindsay was connected with the Rubber Clothing Company in 1872 or not?

A. I have not.

275 X Q. Was George Clapp ever an employee of the Rubber Clothing Company?

A. Yes, sir; he was; in the city of New York.

276 X Q. When?

A. Previous to 1867.

277 X Q. Was he also subsequently?

A. No, sir.

278 X Q. Was George B. Thompson an employee of the Rubber Clothing Company?

A. He was during a brief interval between the time that the stock of goods in St. Louis was purchased of H. G. Norton & Co. and sold to the Goodyear Rubber Company.

279 X Q. Was Joseph Frazser an employee of the Rubber Clothing Company?

A. He was not an employee exactly. He was interested in the business done at San Francisco.

47 280 X Q. Was he at the time that the business was sold out?

A. Yes, sir.

281 X Q. What factories of rubber goods does the Goodyear Rubber Company own?

A. It owns the factory at Middletown, Connecticut.

282 X Q. How long has it owned that?

A. It has leased or owned it seven years, with a brief interval.

283 X Q. What interval was that?

A. About three or four years ago it was leased for a few months to the Candle Company of New Haven.

284 X Q. What kind of goods does it manufacture or has it manufactured at the Middletown factory?

A. It has manufactured boots and shoes, articles of clothing, and some hose.

285 X Q. Anything else?

A. Well, other articles of the same general line.

286 X Q. You speak of the Goodyear Rubber Company having leased or owned that factory; when did they acquire title to it as owners?

A. My recollection is it was a year ago last summer that they bought it.

287 X Q. Now, has the Goodyear Rubber Company had any other factory besides the Middletown factory?

A. Well, it had a factory for several years in the city of New York.

288 X Q. What factory was that?

A. In East 27th street.

289 X Q. What did it manufacture there?

A. It manufactured gas tubing and other tubing.

290 X Q. Has it had any other factories besides the Middletown and New York factories?

A. It owned a factory for a time in Elizabeth, New Jersey.

291 X Q. What did it manufacture there?

A. It manufactured oil-cloths.

292 X Q. How long has the Elizabeth factory been given up?

48 A. It is not given up now; it still continues to sell the goods manufactured there, furnishing the capital to operate it.

293 X Q. It is still owned by the Goodyear Rubber Company?

A. The title to the factory is not now in the Goodyear Rubber Company.

294 X Q. How long since it passed out of the ownership of the Goodyear Rubber Company?

A. Well, I am unable to say exactly, but perhaps two years; may be three.

295 X Q. Is the Goodyear Rubber Company still operating the New York factory that you spoke of?

A. Not now.

296 X Q. How long has it given that up?

A. I am unable to tell you exactly without referring to memoranda.

297 X Q. About how long?

A. Well, it is three or four years ago.

298 X Q. Are those the only factories that the Goodyear Company has had?

A. It has furnished the capital to operate some other factories and sold the goods made at those places.

299 X Q. It has had no other factories of its own?

A. It has a manufactory at San Francisco.

300 X Q. Anywhere else?

A. I don't think of any other.

301 X Q. How long has it had the factory at San Francisco?

A. Four or five years, I suppose.

302 X Q. What do they manufacture at San Francisco?

A. Well, they make packing and hose, springs, and a variety of mechanical articles.

303 X Q. Were either the Middletown, New York, Elizabeth, or San Francisco factories ever the factories of the Rubber Clothing Company?

A. No, sir.

304 X Q. Where have the Rubber Clothing Company's factories been, if any?

A. Well, they have not been manufacturing for some little time.

305 X Q. For how many years?

A. For several years; I am not able to tell without referring to memoranda.

49 306 X Q. Have you visited the San Francisco place of business of the Goodyear Rubber Company within a year or two?

A. No, sir.

307 X Q. Have you visited the St. Louis place of business of the Goodyear Rubber Company within a year or two?

A. No, sir.

308 X Q. Or the Chicago place?

A. No, sir.

309 X Q. How long is it since you visited the place of business of the Goodyear Rubber Company in St. Louis?

A. I think it is five years ago.

310 X Q. Will you look at the photograph that I now show you and state if that represents the signs used on the St. Louis place of business of the Goodyear Rubber Company?

A. Well, I am unable to tell you, sir; I don't remember; it is five years since I was there. I cannot say.

The photograph shown witness is marked for identification.

F. M. SHEPARD.

Sworn before me—

JOHN A. SHIELDS,
*Examiner, &c.*

Adjourned to Thursday, March 22d, 1883, at 11 a. m.

NEW YORK, *March 22d*, 1883.

Met and adjourned to March 29th, at 11 a. m.

NEW YORK, *March 29th*, 1883.

Adjourned to April 1, at 11 a. m.

APRIL 1, 1883.

Adjourned to April 9th, 1883.

50 APRIL 9TH, 1883.

Present: Counsel as before.

Redirect examination of FREDERICK M. SHEPARD by Mr. MACFARLAND:

1 Re-D. Q. Referring to the Rubber Clothing Company, this corporation was organized before the Goodyear Rubber Company?

A. Yes, sir; it was organized in 1863 or 1864; I think, 1863.

2 Re-D. Q. The Goodyear Rubber Company was organized in 1873, I think you said?

A. 1872.

3 Re-D. Q. Commencing business in the early part of 1873?

A. Yes, sir.

4 Re-D. Q. I will ask you whether the corporate organization of the two companies was the same or different?

A. It was wholly different.

5 Re-D. Q. The proprietary interests, were they alike or were they different?

Objected to, as evidence of such proprietary interest must be of documentary character, and the documents are the best evidence; also as calling for the witness to state a mere conclusion on his part.

A. Always different.

6 Re-D. Q. The business of the two companies, was that the same or different?

A. Always different—separate and distinct.

7 Re-D. Q. So that there was no identity between the two corporations?

A. None whatever.

Same objection.

8 Re-D. Q. You have mentioned that at one time, and for some time after its organization, the Goodyear Rubber Company kept its funds in the bank account of the Rubber Clothing Company. Will you be good enough to state, as fully as you are able, the reasons

why that was done and how long that course of business continued?

51 A. It was done in the city of New York only, and as a mere matter of convenience, and continued for about two years after the operations of the Goodyear Rubber Company began.

9 Re-D. Q. Did this produce any confusion of funds or unity of interest?

A. None at all.

10 Re-D. Q. The accounts of the two corporations were entirely distinct?

Objected to, as the accounts themselves are the best evidence.

A. The accounts and books were always separate and distinct.

11 Re-D. Q. You were also asked as to the reasons for your selecting the name of the Goodyear Rubber Company as its corporate name. Do you wish to make any further observations on that topic?

A. Among the reasons for selecting it was that it owned licenses to manufacture goods under patents granted to Charles Goodyear, Jr.—licenses from him. Another reason was that we knew it would please Mr. Goodyear to have us use this name. We took it because it appeared to us that it did not interfere with any other company in existence, and no complaint was ever made of its use except by the Goodyear's India Rubber Glove Manufacturing Company.

Defendants' counsel objects to that part of the answer of the witness which states that one reason for selecting the name "Goodyear Rubber Company" was by reason of certain licenses; also objected to as incompetent and not the best evidence, such licenses being the best evidence of their contents.

13 Re-D. Q. In speaking of Mr. Goodyear you refer to Mr. Charles Goodyear, the son of the inventor?

A. Charles Goodyear, Jr.

14 Re-D. Q. You knew him at this time?

A. Yes; Mr. Charles Goodyear, Sr., not being alive at this time.

52 15 Re-D. Q. Being interrogated as to the value to you of this name you answered that you did not know whether it did you any harm or good. To what period of time, if any particular period of time, did you refer in making that answer?

Objected to because the answer of the witness is general, comprehensive, and covers all time, and the attempt is now made to have him contradict what he has already sworn to.

A. I understood the question to refer to the time that we made the choice of it. I answered the question referring to that time alone.

16 Re-D. Q. Referring to that question, what is the fact with reference to the time that has since transpired and with reference to the date at which the question was asked?

Same objection.

A. It has become the representative of a great amount of labor, time, and capital to us and represents a very large and important business in all parts of the world.

17 Re-D. Q. And is it or is it not of value to you as such representative name?

Objected to as leading and also same objection as before.

A. It is of very great value to us as such representative name.

18 Re-D. Q. You were interrogated as to your claim to particular and separate words constituting part of your name in the abstract and by themselves. I wish you would state exactly what you wish to have understood in that respect.

Objected to, as the answers of the witness have fully and specifically covered all such ground and he cannot now contradict his evidence.

A. There is no data by which I can measure the abstract value of a word or a letter in a word. The three words taken together, "Goodyear Rubber Company," have now become of great value to us.

53 19 Re-D. Q. It is, then, merely as constituting a name that you claim any right to any of those words?

Objected to as leading.

A. Yes, sir.

20 Re-D. Q. Your attention was called to a photograph of one of your business places—I think in St. Louis—on which appeared certain business signs and the names of certain factories as represented by your business house. What were your relations in a general way to the factories the names of which appear on the photograph?

A. It was the names of the factories and places. They are either factories owned by the Goodyear Rubber Company or to which it furnishes capital and for which it is the agent for the sale of their goods.

21 Re-D. Q. At page 45 and following of the stenographer's notes of your testimony your attention was called to various uses and abbreviations of its own name by the Goodyear's India Rubber Glove M'f'g Company, and you were asked if you complained of that; to which you replied, No; your company did not complain. What do you mean to be understood by "complain" in that connection?

A. I mean we did not commence suits.

22 Re-D. Q. And that is what you mean when you say you did not complain?

A. That is my meaning exactly.

23 Re-D. Q. And nothing else?

A. And nothing else. We did complain in conversation, I think, to Mr. Allerton and to Mr. Vermeule.

Answers of the witness objected to as all in direct conflict with his previous evidence.

24 Re-D. Q. I wish, at this place, Mr. Shepard, you would state as clearly as you can how the various abbreviations of its name by this

corporation, its dealings with its name, and its adoption of the
54 name of the "Goodyear's India Rubber Glove M'f'g Company" has affected your business and interests, if at all.

Objected to as fully covered by the previous direct and cross-examination.

A. The abbreviations that have been adopted at different times by the Goodyear's India Rubber Glove M'f'g Company of their name has caused some confusion, but the great injury done to us has been by their change of name to the Goodyear Rubber M'f'g Company, which has done us a great deal of injury; the extent of that I am unable to determine.

25 Re-D. Q. Referring to this letter of Mr. Allerton which has been carried into the stenographer's notes, Mr. Allerton says we have been long known and understood by people generally to be the "Goodyear Rubber Company." Was or was not the fact so as stated by Mr. Allerton? How was the fact?

Objected to as calling for witness to state an evident conclusion on his part.

A. No, sir; they were always known as the Glove Company, and the assumption of Mr. Allerton is without foundation.

26 Re-D. Q. I hand you two photographs and I ask you what they represent?

A. One represents the appearance of the Broadway front of the Goodyear's India Rubber Glove M'f'g Company's place of business; the other represents the Mercer-street front.

The two photographs are offered in evidence and marked, respectively, Complainant's Exhibit Photograph of Broadway Front G. I. R. G. M'f'g Co.'s Store, April 9th, 1883, J. A. S., examiner, and Complainant's Exhibit Mercer-Street Front of G. I. R. G. M'f'g Co.'s Store, April 9th, 1883, J. A. S., Ex'r.

27 Re-D. Q. The photographs exhibit in more or less dis-
55 tinctness the business signs of the Goodyear India Rubber Glove M'f'g Company.

A. They represent the fixed signs. There are other movable signs placed—one on the sidewalk in Broadway, with the words "Goodyear Rubber M'f'g Co." in large letters, not shown on this picture.

28 Re-D. Q. About what is the style of that sidewalk sign and the shape of it; it is sort of wedge-shape, isn't it?

A. Yes, sir; it is a triangle set on its base with the words "Goodyear's Rubber M'f'g Company" on both sides, with gold letters on a black ground, showing both up and down the street. The size I am unable to give.

29 Re-D. Q. Is it or is it not a prominent sign?

A. It is a large, prominent sign.

30 Re-D. Q. How long have these business signs, represented by the photographs, remained as they appear at present on the photographs, if you are able to state?

A. They have remained as they appear on the photographs since

about the first of January, 1882. The sign on the Mercer-street end was the sign over the Broadway front of the building previously occupied by the Goodyear's India Rubber Glove Manufacturing Company.

31 Re-D. Q. How long since the sign to which you have referred as standing on the sidewalk was placed there?

A. Since January, 1882.

32 Re-D. Q. This letter of Mr. Allerton's, I notice, is addressed to the Rubber Clothing Company.

A. Yes; I said the other day that it was received by me at San Francisco; it was sent to me from the office of the Rubber Clothing Company.

33 Re-D. Q. Not from the office of the Goodyear Rubber Company?

A. No, sir.

34 Re-D. Q. Did the Rubber Clothing Company ever adopt the use of the name "Goodyear's Rubber Company?"

Objected to as calling for a conclusion.

A. No, sir; they never did.

56 35 Re-D. Q. And never used the name of the company in any way or manner?

A. Never.

36 Re-D. Q. Was this letter answered?

A. Not to my knowledge.

37 Re-D. Q. Are you able to state why it was not answered?

A. Well, because the Rubber Clothing Company had done nothing of the sort complained of.

Recross by Mr. BETTS:

1 Re-X Q. You speak of the signs, of which photographs have been put in evidence, having been used at the place of business of the Goodyear's India Rubber Glove Manufacturing Company since January, 1882; that is as long as that company has had that place of business, is it not?

A. Yes, sir; it is.

2 Re-X Q. You say that the letter of Mr. Allerton, of May, 1873, was forwarded to you from the office of the Rubber Clothing Company and not from the office of the Goodyear Rubber Company; how do you know that fact?

A. I remember having received it.

3 Re-X Q. Is that all you know about it?

A. Yes.

4 Re-X Q. Then you don't know where it came from, do you?

A. Yes; it was with other letters which came to me from San Francisco.

5 Re-X Q. That is all you know about it?

A. That is all.

6 Re-X Q. Where was the office of the Goodyear Rubber Company at that time, or did it have any office in May, 1873?

A. Well, I am unable to tell you what number in Broadway.

7 Re-X Q. Did it have any office in May, 1873?

A. Yes, sir; it did.

8 Re-X Q. At the same place as the Rubber Clothing Company?

A. Well, that I am unable to tell without referring to the memoranda.

57 9 Re-X Q. You know it was, don't you, Mr. Shepard?

A. No, sir; I do not.

10 Re-X Q. You never had a separate office from the Rubber Clothing Company, did you?

A. Yes.

11 Re-X Q. Where was the Rubber Clothing Company's office in May, 1873?

A. Well, it was in Broadway, but the number I am unable to give without referring to the memoranda; they occupied several numbers on Broadway—different stores.

12 Re-X Q. Will you state where the Goodyear Rubber Company's office was at that time?

A. Well, I think at that time it was at their factory; I think in East Twenty-seventh street.

13 Re-X Q. Then, they didn't have any office on Broadway?

A. Well, they might have had.

14 Re-X Q. If they had one, it was at the Rubber Clothing Company, wasn't it?

A. Well, I am unable to answer.

15 Re-X Q. Answer fairly; you know the fact; if they had an office anywhere but at their factory they had an office with the Rubber Clothing Company at that time?

A. No, sir; I don't know that.

16 Re-X Q. Can you refresh your recollection in regard to that matter?

A. I presume I can.

17 Re-X Q. How can you do that?

A. With memoranda and books.

18 Re-X Q. What books?

A. Letter books.

19 Re-X Q. Any account books you think would refresh your recollection?

A. The account books might not show the location.

20 Re-X Q. Did you have any factory in East Twenty-seventh street in May, 1873?

A. They did.

21 Re-X Q. The other day, after looking at the catalogue of Shepard & Dudley, published in May, 1873, with the advertisement upon it of the Rubber Clothing Company, did you not swear that in May, 1873, the Goodyear Rubber Company was doing no business?

A. No, sir; I did not swear that.

58 22 Re-X Q. On the 9th of March, referring to the two companies, the Rubber Clothing Company and the Goodyear Rubber Company, you swore in these words: "They have had an office at the same place always;" is not that true?

A. It may be so.

23 Re-X Q. Is it not true?

A. I think the Goodyear Rubber Company, in the early part of 1873, did not have an office by itself except at its factory. The Rubber Clothing Company bought tubing of them and sold it; how long that continued exactly I am unable to state—how many months. In the early part of 1873 the business became distinct and separate.

25 Re-X Q. Is it not true, then, that whenever the Goodyear Rubber Company had any office it was always in the office of the Rubber Clothing Company?

A. It has been in the same building.

26 Re-X Q. On the same floor of the building?

A. Very likely.

27 Re-X Q. You know, don't you?

A. Well, it has had the same offices in the same building and it has separate offices.

28 Re-X Q. They have been on the same floor, have they not?

A. No, sir; they have been in separate buildings.

29 Re-X Q. Now, you swear they have been in separate buildings?

A. At the present time they are in separate buildings.

30 Re-X Q. Have not they always had their offices at the same building?

A. They have had offices in the same building.

31 Re-X Q. And always done so?

A. But not all their offices.

32 Re-X Q. That is a mere quibble?

A. No, sir; it is not; separate place of business.

33 Re-X Q. Now, will you please state whether or not what you swore to on the 9th of March is true or false, that these two concerns have always had an office at the same place?

A. Well, that is correct, with the exception that I might add
59 that in the early part of 1873 there was, I think, for a time, a separation—different offices.

34 Re-X Q. You mean different offices; that you think there was a time when the Goodyear Rubber Company had an office only at its factory?

A. I think so.

35 Re-X Q. You are not sure about that, are you?

A. I think it was in the early part of 1873.

36 Re-X Q. If the Goodyear Rubber Company in May, 1873, had any office aside from the office at its factory then that office was at the place of business of the Rubber Clothing Company, was it not?

A. Well, sir, I am unable to tell you from recollection; it is a good while ago.

37 Re-X Q. That is the best answer you can give, is it?

A. Yes, sir.

38 Re-X Q. You spoke to-day of the reasons which induced you to adopt the name of the Goodyear Rubber Company, and, among others, I understood you to say that the possession of certain licenses from Charles Goodyear, Jr., was an important reason for inducing you to select that name; is that correct?

A. That was one of the reasons.

39 Re-X Q. How about the prominence of that reason; is that the most prominent reason for selecting that name?

A. It was among the prominent reasons.

40 Re-X Q. Was there any as prominent as that, do you think?

A. Well, that was among the prominent reasons. We hoped to make a considerable profit out of the goods manufactured.

41 Re-X Q. How long had you those licenses.

A. I am unable to tell you without referring to them.

42 Re-X Q. Have you those licenses in your possession now?

A. I presume they are.

43 Re-X Q. I call for the production of those licenses.

A. I have not them with me.

Plaintiff's counsel states that they do not intend to produce them.

60 44 Re-X Q. Can you state about how long you had those licenses?

A. No, sir; I cannot from recollection.

45 Re-X Q. Can you state the time within ten years?

A. It is a matter of recollection; I am unable to give you the date.

46 Re-X Q. State it as near as you can.

A. Well, sir, it would be guessing.

47 Re-X Q. Guess, then.

A. I am unable to.

48 Re-X Q. Can't even guess?

A. I can guess, but I don't think it would be exactly correct.

49 Re-X Q. State it as near as you can; let us see how your memory is.

A. Well, I decline to guess; I don't like to guess.

50 Re-X Q. If you remember these licenses you must have some idea of when they were granted?

A. I have no recollection of the date in my mind now; we had the licenses and we hoped to make them valuable.

51 Re-X Q. About how long have you had them?

A. I am unable to tell by recollection.

52 Re-X Q. Do you think you had them as much as a year?

A. Well, I think so.

53 Re-X Q. As much as two years?

A. My recollection is indistinct on the subject; I don't remember the date of the licenses.

54 Re-X Q. Could you tell us under what patents these licenses were granted?

A. Patents to Charles Goodyear, Jr.

55 Re-X Q. Charles Goodyear took out a great many patents; will you tell us what patents?

A. I am unable to from recollection.

56 Re-X Q. Or what kind of goods they related to?

A. Yes; one line was carriage trimmings.

57 Re-X Q. Remember anything else?

A. There were other articles, but I don't remember them now.

58 Re-X Q. Will you please state to us to whom these licenses were granted?

A. The licenses were made to me.

61 59 Re-X Q. To you personally?

A. Yes, sir.

60 Re-X Q. They were made long before the Goodyear Rubber Company was ever thought of, were they not?

A. No, sir.

61 Re-X Q. They were made long before the Goodyear Rubber Company was ever talked of?

A. No, sir.

62 Re-X Q. Now, will you please tell us when they were made?

A. My recollection of the dates—I have not in my mind now.

63 Re-X Q. And yet you swear to this court that the possession of those licenses, about which you cannot give a single particular except they were under some patents of Charles Goodyear, which you cannot name, for some articles, none of which you can name except carriage goods, as one of the reasons which led you to select your name; is all your evidence given in this case about as definite and certain as this?

A. The evidence speaks for itself.

64 Re-X Q. That is about the best answer you can give?

A. I have nothing further to add.

65 Re-X Q. Did the Rubber Clothing Company have any licenses?

A. Not that I remember.

66 Re-X Q. Do you manufacture under any of these licenses?

A. Yes, sir.

67 Re-X Q. How long have you manufactured under these licenses?

A. Had we then, at that time?

68 Re-X Q. Yes, sir.

A. No, sir; not at the time—in 1873.

69 Re-X Q. You speak of the Goodyear Rubber Company as having some relation with certain factories; what was its relation to the factory at Bristol, Rhode Island?

A. It was the agent for the sale of their goods.

70 Re-X Q. What company had its factory at Bristol, Rhode Island?

A. The National Rubber Company.

62 71 Re-X Q. The National Rubber Company had its own place of business in various parts of the United States, did it not?

A. Its only place of business was at Bristol, Rhode Island, until about within three years, when, I think, it has had a place of business at Boston.

72 Re-X Q. Were you exclusive agents at any time for the sale of the goods of the National Rubber Company?

A. We have been, in the places where we did business.

73 Re-X Q. Were you exclusive agents in St. Louis?

A. Yes, sir.

74 Re-X Q. What were your relations to any factory at Naugatuck, Conn.?

A. Well, we leased a factory at Naugatuck, Conn, but we did not, as it proved, operate it.

75 Re-X Q. Did you ever make a single particle of goods at Naugatuck, Connecticut?

A. No, sir; the factory was never run.

76 Re-X Q. Who leased the factory at Naugatuck, Connecticut?

A. I think I leased it personally.

77 Re-X Q. The Goodyear Rubber Company did not lease it?

A. No, sir; I think not; but I am uncertain about it without referring to the leases; we paid the rent for some years.

78 Re-X Q. You say "we," you mean you did. When you say "we" you don't mean anybody except yourself?

A. I mean the interests with which I was connected all the time.

79 Re-X Q. What interests do you mean?

A. Well, I am unable to say what the division of the cost was without referring to papers.

80 Re-X Q. Referring to the letter of Mr Allerton, in which he says that "we (the Goodyear's India Rubber Glove Manufacturing Company) have been long known and understood by people generally as being the Goodyear Rubber Company;" do you mean to say that you did not know that prior to May, 1873, the Goodyear's India Rubber Glove Manufacturing Company had been addressed in bills, letters, and communications of that kind as the Goodyear's Rubber Company?

63

A. They had not, to my knowledge, in a general way.

81 Re-X Q. Not to some extent?

A. Not to any considerable extent.

82 Re-X Q. Well, you still evade the question by qualifying your answer by "considerable;" had they to any extent?

A. I do not think they had to any extent; I do not think they were known by people generally in any other way than the Glove Company.

83 Re-X Q. I don't ask you whether they have been known generally; I ask whether to any extent they were addressed in that way.

A. As far as my personal knowledge was concerned, I would say in a very, very limited way, if at all.

84 Re-X Q. Had they been addressed so in a limited way, to your knowledge?

A. In a very limited way; never, to my knowledge, that I recollect now.

85 Re-X Q. Had you known of their being addressed, to a great or less extent, as the Goodyear's Manufacturing Company, prior to 1873?

A. Never heard of their being so addressed.

86 Re-X Q. Had you known of their being addressed as the Goodyear's I. R. G. Company, prior to 1873, in letters, correspondence, bill-heads?

A. Well, some bill-heads were shown; that is the only remembrance I have about it.

87 Re-X Q. Aside from seeing the bill-heads of your own concern so addressed, that is all the knowledge you have on this subject?

A. Yes, sir; that is all the remembrance I have about it.

88 Re-X Q. It might have been done very generally and you not know it?

A. No, sir; I think not.

89 Re-X Q. Do you examine the correspondence that comes into the Goodyear's India Rubber Glove M'f'g Company?

A. No, sir.

64 90 Re-X Q. Never have seen any of it at any time?

A. Of course, I don't examine their letters.

91 Re-X Q. Then you don't know how they were addressed prior to 1873?

A. I have no answer to make to that.

92 Re-X Q. Please answer.

A. I don't know anything about it.

93 Re-X Q. You cannot say but that they were addressed, prior to 1873, as the Goodyear's Rubber Company, the Goodyear's M'f'g Company, or the Goodyear's I. R. G. Company, can you?

A. I have had no opportunity of examining their correspondence.

94 Re-X Q. You don't know, do you?

A. I have had no opportunity to examine their correspondence.

95 Re-X Q. Please answer my question.

A. Of course, I don't know.

96 Re-X Q. Why did you not answer that before?

A. Because I thought the question unnecessary.

Counsel for the Goodyear's India Rubber Glove M'f'g Company moves to strike out all the direct evidence of the witness in regard to the existence of any licenses as a reason for adopting the name of the Goodyear Rubber Company by reason of the refusal to produce the same.

By Mr. MACFARLAND:

38 Re-D. Q. In referring to the name by which the Goodyear's India Rubber Glove M'f'g Company was known prior to 1873 as the Glove Company, to whom and among what class of people was it known as the Glove Company?

Objected to as calling for a mere conclusion of witness. It is very evident from his examination that he knows nothing about the subject.

A. From a very active participation in the rubber business for twenty years previous to 1873, I know that in all conversa-

65 tions with others of the trade that I have had and with people dealing in India-rubber goods the general designation of it was as the Glove Company.

39 Re-D. Q. How many places of business has the Goodyear Rubber Company in this city?

A. It has three places of business; 57 Maiden Lane, 362 Broadway, and 487 Broadway.

40 Re-D. Q. Are they all considerable stores or establishments?

A. Yes, sir; they all do a very considerable business—large business.

41 Re-D. Q. At which one of those places of business does the Rubber Clothing Company have office accommodations?

A. At 487 Broadway.

42 Re-D. Q. There is no rivalry between the two companies in business matters—between the Rubber Clothing Company and the Goodyear Rubber Company?

A. No, sir; they have always conducted their affairs without competition.

43 Re-D. Q. What are the reasons, if you are able to state any, why the Rubber Clothing Company should have office accommodations in one of your own stores?

A. Well, it has been merely a matter of convenience.

44 Re-D. Q. And nothing beyond that?

A. Nothing beyond that.

F. M. SHEPARD.

Sworn to before me—

JOHN A. SHIELDS, *Examiner.*

Counsel for the complainant asks for the production of the several documents embraced in the complainant's notice to the defendants.

The defendants' counsel states that he has not referred the notice in question to his clients or asked for the production of any such papers (if there be any such) for the reason that he does not understand that such notice can be served in an equity suit in the
66 United States circuit court with the effect of allowing secondary evidence of the contents of the papers called for in such notice. He insists if any papers or documents in possession of the defendants are required that the proper course is to produce the same by *subpœna duces tecum.*

Complainant's notice to produce said papers offered in evidence and marked Complainant's Exhibit Notice to Produce Originals of Envelopes, etc., April 9th, 1883, J. A. S., Ex'r.

WILLIAM G. VERMILYE, called as a witness on the part of complainant, being duly sworn, testifies as follows:

By Mr. MACFARLAND:

1 Q. Where do you reside, Mr. Vermilye?

A. In Englewood, New Jersey.

2 Q. Your occupation?

A. India-rubber goods.

3. What relation do you sustain, if any, to the Goodyear Rubber Company?

A. Assistant secretary.

4 Q. How long have you been assistant secretary of that company?

A. For several years; I cannot tell the exact date.

5 Q. You know the Goodyear's India Rubber Glove Manufacturing Company?

A. Yes, sir.

6 Q. And have for some time?

A. Twenty-two or twenty-three years.

7 Q. Do you remember when that company commenced to employ prominently the name of Goodyear's Rubber M'f'g Company?

A. I think it was about January, 1882.

8 Q. What, if any, effect was produced by that fact in so far as that part of the public engaged in buying, selling, and dealing in rubber goods is concerned?

A. It led to confusion.

9 Q. What do you mean by confusion?

67 A. Well, it led to confusion in the names of the Goodyear Rubber Company and the Goodyear's Rubber Manufacturing Company.

10 Q. And the one being mistaken for the other; is that what you mean?

A. Yes, sir.

11 Q. Did it ever happen that your company received letters and documents intended for the Goodyear's India Rubber Glove Manufacturing Company?

A. Yes, sir.

12 Q. Were there many instances of such mistakes?

A. A good many.

(A recess was taken at this point until 2 o'clock.)

13 Q. State such as have come under your notice and that you recollect.

A. On the 17th of July, 1882, we received a letter by mail addressed to Mr. Andrew C. Frary, care of the Goodyear Rubber Company, of which I then made and signed a memorandum, which I now hold in my hand for the purpose of refreshing my recollection. Frary was in the service of the Goodyear's India Rubber Glove Manufacturing Company, and the letter was sent up to him by H. H. Shephard, one of the clerks of the plaintiff company.

On July 18th, 1882, we received a postal card addressed Mr. Brady, Broadway, corner of Broome St., city, postmarked New York, July 17th, 5 p. m., P. O. A part of the address is "With Goodyear Rub. Co." It was dated July 15th, 1882, and signed James Mulaney, 235 Greenwich street. The person to whom it was addressed being in the service of the Glove Company, it was sent up to him there.

July 18th, received a letter addressed Mr. Wm. E. Knickerbocker, Goodyear Rubber Company, Broadway, north of Broome street, New York city. On the envelope there was "The Delevan, Albany,

68 New York, T. Rosselle, Son & Co., proprietors," etc., etc., postmarked Albany, July 17, 11 p. m., New York. This was delivered to Mr. Van Vleit at the Glove Company's.

July 24th the Goodyear Rubber Company received a postal card addressed Mr. Clinton Van Vleit, Goodyear Rubber Company, Broadway and Broome, New York city; delivered to George Spaulding, a clerk in the employ of the Goodyear's India Rubber Glove Manufacturing Company.

August 7th, 1882, received two letters addressed as follows: One to Mr. W. E. Knickerbocker, Goodyear Rubber Company, Broadway, above Broome, New York city; the other, L. H. Pitcher, Goodyear Rubber Company, Broadway, above Broome, New York city; both letters postmarked Bethlehem, New Hampshire, August 5th, and apparently in the same handwriting. Both letters were delivered to the Goodyear's India Rubber Glove Manufacturing Company's store, as both Knickerbocker and Pitcher were in their employ.

August 9th, received a postal card addressed Mr. Clinton Van Vleit, Broadway and Broome street, New York city, Goodyear Rubber Company. It was delivered to the Goodyear's India Rubber Glove Manufacturing Company, Mr. Van Vleit being in their employ.

August 22d, received a letter addressed Mr. Henry Singate, 108 Wooster street, in care of Goodyear's Rubber Company, New York city; sent it to the Goodyear's India Rubber Glove Manufacturing Company, who said Singate was in their factory.

Received, August 21st, 1882, a letter marked Fred. Stephenson, Esq., Goodyear Rubber Company, Broadway, near Central Hotel, New York. It was delivered to Mr. Stephenson at the Goodyear's India Rubber Glove Manufacturing Company's.

August 22d, received a letter addressed A. C. Frary, Esq., care Goodyear Rubber Company, Broadway, New York city. It
69 was delivered to the Goodyear's India Rubber Glove Manufacturing Company, who stated that Frary was in their employ.

September 5th, 1882, received a letter marked Mr. F. Stephenson, care of Goodyear & Co., Broadway and Broome street, New York, N. Y. It was delivered to the Goodyear's India Rubber Glove Manufacturing Company, Stephenson being in their employ.

On the 15th September, 1882, letter addressed Mr. John Church, Goodyear Rubber Company, N. Y., B'way, near Broome street. It was delivered to the Goodyear's India Rubber Glove Manufacturing Company, cashier's desk. Parties stated Church was in their employ.

On the 16th of September, a letter addressed A. P. Leacraft, care Goodyear Rubber Company, B'way and Fulton streets, city. This was sent to the Goodyear's India Rubber Glove Manufacturing Company's store, 205 Broadway, Leacraft being in their employ.

September 19th, a letter addressed Mr. C. Van Vleit, Goodyear Rubber Company, Broadway, between Spring and Broome streets, New York city, New York. It was delivered to the Goodyear's India Rubber Glove Manufacturing Company, 503 Broadway.

September 20th, postal card addressed Goodyear Rubber Company, Broadway, New York city, between Spring and Broome. It was from John Wanamaker, Philadelphia, dated 9, 18, '82. It was delivered to the Goodyear's India Rubber Glove Manufacturing Company, 503 Broadway.

September 23d, a letter addressed A. C. Leaycraft, Esq., care Goodyear Rubber Company, New York city, Broome street store. It was delivered to the Goodyear's India Rubber Glove Manufacturing

Company, 503 Broadway, where they said it belonged to one of their men, in their store, 205 Broadway.

70 Letter received September 27th, 1882, Edward W. Clements, Esq., with Goodyear Rubber Company, Broadway and Broome streets, city. It was delivered to the Goodyear's India Rubber Glove Manufacturing Company, who stated that Clements was in their employ.

September 29th, 1882, a letter addressed Knickerbocker, care Goodyear Rubber Company, New York city, N. Y. It was delivered to Knickerbocker at the Goodyear's India Rubber Glove Manufacturing Company's store.

Received a postal card October 6th, addressed Goodyear Rubber Company, 53 and 55 Broadway, N. Y. C. We delivered it to the Goodyear's India Rubber Glove Manufacturing Company, 503 Broadway, who, after examining their books, stated it was intended for them, as it was in relation to a C. O. D. they had sent out.

October 7, letter addressed Mr. Fred. Stephenson, Goodyear Rubber Company, Broadway near Gr. Cent. Hotel, New York city. It was delivered to the Goodyear's India Rubber Glove Manufacturing Company, Stephenson being in their employ.

On the 13th of October, postal card addressed Goodyear Rubber Company, 543 Broadway, New York, signed Roll, Thayer & Williams; on the outside, as being part of the address, there were the words "Mr. Smith." This was delivered to the Glove Company, who stated the parties were their customers; Smith was their salesman; postal card was for them.

October 11th, Mr. Fred. Stephenson, care of Goodyear Rubber Company, 487 Broadway, city. This was a letter. This was delivered to Mr. Stephenson personally at the Goodyear's India Rubber Glove Manufacturing Company, he being in their employ.

71 October 16th, received a postal addressed Goodyear Rubber Company, 503 Broadway, signed Summers & Walker, dated Monroeton, Pa., October 14th, 1882. It was delivered to the Goodyear's India Rubber Glove Manufacturing Company, to Mr. Van Vliet; he said it was intended for them.

October 16th, we received a letter the envelope of which was addressed Goodyear Rubber Company, New York city. The inside of the letter was addressed Goodyear Rubber M'f'g Co. It contained an order for six pairs drab fishing stockings. It was from Simmon's Hardware Company, St. Louis, Mo. It was delivered to the Goodyear's India Rubber Glove Manufacturing Company to Mr. Van Vleit, who said it was intended for them.

October 17, a letter addressed to Mr. Fred. Stephenson, Goodyear Rubber Company, Broadway, Grand Hotel Square, New York, N. Y. It was delivered to the Goodyear's India Rubber Glove Manufacturing Company, Stephenson being in their employ.

October 20th, 1882, a letter addressed Mr. E. W. Clements, care Goodyear Rubber Company, corner Broadway and Broome, New York. It was delivered to the Goodyear's India Rubber Glove Manufacturing Company, Mr. Clements being in their employ.

On the 31st of October we received a postal addressed "Messrs.

Goodyear Rubber Company, Broadway, opposite St. Nicholas Hotel, New York city," signed James Y. Watkins & Son. It was delivered to the Goodyear's India Rubber Glove Manufacturing Company, and we asked them if it belonged to them. They replied, " Yes, as we sell these parties these goods."

October 28th, received a letter addressed F. R. Vermeule, Esq., care of Goodyear Rubber Company, Broadway, New York, N. Y. It was delivered to the Goodyear's India Rubber Glove Manufacturing Company, Mr. Vermeule being in their employ.

72 On the 8th of November, 1882, we received a letter addressed J. D. Vermeule, Esq., 487 Broadway, New York. We delivered this to the Goodyear's India Rubber Glove Manufacturing Company, Mr. Vermeule being then their vice-president and treasurer.

We received a postal on the 8th of November, addressed Goodyear Rubber Company, Broadway, near Broome street, New York, signed Herrman True. We delivered it to the Goodyear's India Rubber Glove Manufacturing Company, who said the party was a customer of theirs and the postal was intended for them.

We received, November 9th, a letter addressed Mr. Henry R. Hovey, Goodyear's, corner of Broadway and Broome, city. This was delivered to the Goodyear's India Rubber Glove Manufacturing Company, Hovey being in their employ.

On the 14th of November we received a letter addressed J. D. Vermeule, Esq., Goodyear Rubber Company, Fulton and Broadway, New York. This was delivered to the Goodyear's India Rubber Glove Manufacturing Company, Mr. Vermeule being president of their company.

14 Q. Did the several letters and postals to which you have referred come under your personal notice at the time of their receipt?

A. Well, I think every one of them did; but there may be one or two exceptions.

Q. As to the receipt of the letters, have you refreshed your recollection as to what you have stated in respect to the letters and postals received from the memorandum made at the time by yourself?

A. Yes, sir.

16 Q. And as to the delivery of them by memorandum made by yourself or some one else?

A. By others.

17 Q. Others in the service of your company?

A. Yes, sir.

73 18 Q. The Rubber Clothing Company have had business transactions within the last few years with the Goodyear's India Rubber Glove M'f'g Company?

A. Yes, sir.

19 Q. Involving the receipt and payment of money?

A. Yes, sir.

20 Q. Are you able to produce a form of the receipt employed in such transactions by the Goodyear's India Rubber Glove Manufacturing Company?

A. Yes, sir.

21 Q. Will you be kind enough to produce one?

Form of receipt produced offered in evidence and marked Complainant's Exhibit 25, Ap'l 9th, 1883, J. A. S., Ex'r.

22 Q. How long has this form of receipt been in use by the Goodyear's India Rubber Glove Manufacturing Company?

A. Since about the date of that, I think, January 26th, 1882, with the exception of the announcement of removal, which has since been discontinued.

23 Q. Were you in the rubber business yourself before your connection with the plaintiff company?

A. Yes, sir.

24 Q. In this city?

A. Yes, sir.

25 Q. Between what dates, as near as you can remember?

A. 1868, I think it was, to 1872 or 1873.

26 Q. During that time did you yourself have business transactions with the Glove Company?

A. I did.

27 Q. Are you able to state by what abbreviation of their full name they were generally known to the trade at that time and during those dates?

A. Yes, sir; generally by the name of the Glove Company?

28 Q. Were they, in their business transactions with you, in the habit of so abbreviating their name?

A. They were in the habit of abbreviating their name.

29 Q. Have you any documents signed by that company
74 during that period that would indicate how they were in the habit of abbreviating their name?

A. I have.

30 Q. Kindly produce them.

A. I produce a receipt book which contains the receipts for money paid that company, signed by the representatives or the agents of that company.

31 Q. Will you refer to such receipts and to all of such receipts as may indicate how they were in the habit of abbreviating their name at this time?

A. I refer to a receipt dated July 6th, 1868, signed Goodyear Glove Company, Folsom, and numbered by me A, and signed with my initials.

Another numbered B, dated August 18, 1868, signed Goodyear's Glove Company, Grey, ——, 1868.

Number C, November 11th, signed Goodyear's Glove Company, Grey.

Number D, dated 11th December, 1868, signed Goodyear Glove Co., per Grey.

Number E, 6th of March, 1869, signed Goodyear's Glove Company, Wells.

Number F, 12th of April, 1869, signed Goodyear's Glove Company, James G. Wells.

Number G, 15th of May, 1869, signed Goodyear Glove Company, p'r A. P. L.

H, July 17th, 1869, receipt, signed Goodyear's Glove Company, Wells.

I, receipt, August 12th, 1869, signed Goodyear Glove Company, A. P. L.

Number J, September 10th, 1869, signed Goodyear Glove Company, per A. P. L.

Number K, dated October 15th, 1869, signed Goodyear Glove Company, per A. P. L.

Number L, Rec'd New York, Feb. 21st, '70, from Mr. W. G. Vermilye forty-one and $\frac{18}{100}$ dollars, in full to the first instant, $41.18.

75 GOODYEAR GLOVE COMPANY,
R. G. ALLERTON, *Treasurer.*

Number M, dated May 3d, 1870, signed Goodyear Glove Company, per A. P. L.

WM. G. VERMILYE.

Sworn before me—

JOHN A. SHIELDS,
*Examiner, &c.*

The said receipts are in evidence, and the receipt book is marked Complainant's Exhibit 26, April 9th, 1883, J. A. S., Ex'r.

Adjourned to Saturday, April 14th, 1883, at 11 a. m.

APRIL 14TH, 1883.

Direct examination of Mr. WM. G. VERMILYE continued.

By Mr. MACFARLAND:

32 Q. Referring to the letters, postals, and documents received at the plaintiff's place of business and which should have been delivered at the place of business of the Glove Company, when you say they were delivered at the office of the Glove Company you merely mean to be understood that they were sent from your own office to be delivered at that office, and as to the facts of delivery I understand you to say you testified from memoranda made from the reports of the messenger?

A. Yes, sir.

Complainant's counsel offers in evidence notice to produce document sent to defendants' counsel, which is marked Complainant's Exhibit No. 26.

76 Defendants' counsel states that he has not produced the document called for by the notice, and refers for the reasons to the statement made in respect to the former notice to produce.

32½ Q. I hand you this envelope and ask you if it was received at your office and when—I mean at the office of the Goodyear Rubber Company?

A. It was received at the office of the Goodyear Rubber Company April 12th, since my last examination.

33 Q. What did it contain?

A. It contained a bill.

34 Q. Did you open it?

A. Yes, sir.

35 Q. What did it contain?

A. It contained a bill to the Derby Silver Company, dated March 5th, 1883, for half a dozen D. C. ice aprons, amounting to $11.25. The bill-head was of the Goodyear Rubber Manufacturing Company and Goodyear's India Rubber Glove Manufacturing Company, 503 and 505 Broadway, New York city; it also contained a check, dated April 11th, 1883, from Derby Silver Company, W. J. Miller, treasurer, for $11.25, drawn to the order of Goodyear's Rubber Company, check No. 5275. The envelope is addressed Goodyear Rubber Company, New York, N. Y.

36 Q. What did you do with the contents of that envelope?

A. The bill and the check were delivered at the Goodyear's India Rubber Glove Manufacturing Company, cashier's desk.

37 Q. When—at once?

A. On the same day.

38 Q. The envelope which you hold in your hand is the original?

A. Yes, sir.

The said envelope is here offered in evidence and marked Complainant's Exhibit No. 27, April 14, 1883, J. A. S., Ex'r.

39 Q. You made a memorandum of its contents on the inside of the envelope?

A. I did.

40 Q. Does Mr. George M. Allerton, who signed some, if not all, of the receipts that were put in evidence on your last examination sustain any official relation to the Glove Company?

77

A. I think my testimony the other day related not to George M. Allerton but to R. G. Allerton.

41 Q. Referring to your testimony on your last examination and to the receipts that were introduced in evidence, did Mr. George M. Allerton sustain any official relation to the Glove Company in his lifetime?

A. He was the president of the company at the time of his death, and I think at a former time was the treasurer.

42 Q. Have you ever seen any specimens of the signing of the name of the Glove Company by Mr. Geo. M. Allerton?

A. Yes, sir.

43 Q. What was the form adopted by him?

Objected to, as the writings are the best evidence.

A. I recall one; it was a receipt signed George M. Allerton, treasurer Glove Company.

44 Q. Is that receipt in your possession?

A. Not at the moment; it is.
45 Q. You can produce it?
A. Yes, sir.
46 Q. Produce it, please.

Cross-examination by Mr. BETTS:

1 X Q. Do you mean to say that the Goodyear's India Rubber Glove Manufacturing Company did not employ prominently, prior to January, 1882, on any of their signs the name of Goodyear Rubber Manufacturing Company?
A. I don't think I ever said so.
2 X Q. They did so, did they not?
A. I think they did use it.
3 X Q. Have for a considerable number of years, have they not?
A. I don't know how long.
4 X Q. Can you give any idea how long?
A. No, sir; I have no idea.
78 5 X Q. For a number of years prior to January, 1882, you have known of it, have you not?
A. I don't think I could measure the time by years.
6 X Q. You could say that you had known of it for a number of years prior to January, 1882, could you not?
A. I don't know how long.
7 X Q. You would not undertake to say that it was five years or ten years or what?
A. No, sir.
8 X Q. Have you known their places of business for a good many years?
A. Yes, sir.
9 X Q. Do you remember their place at 205 Broadway, near Fulton street?
A. Yes, sir.
10 X Q. For how many years have you known their place of business there?
A. Twenty.
11 X Q. During all those twenty years have not they had a large sign on the front of their building, in which the principal word is "Goodyear's" in very large letters, and all the rest of the name of their company is in very small type?
A. There is a large sign on that building, but I would not undertake to describe it nor state how long it had been there.
12 X Q. Don't you remember that fact, that the prominent and distinguishable name on that sign is just the single word "Goodyear's?"
A. Which sign?
13 X Q. The whole sign across the front of the building on the first story of their place of business, 205 Broadway.
A. I do not recall the sign at all.
14 X Q. You have stated that there has been some confusion in regard to the name of the two companies. Do I understand you to

say that you have received a good many letters which were in fact intended for the Goodyear Glove Manufacturing Company?

A. The Goodyear Rubber Company have.

15 X Q. For how long a time has that been the case, that the Goodyear Rubber Company have received letters and orders which were in fact intended for the Goodyear's India Rubber Glove
79 Manufacturing Company?

A. Well, for a year or a year and a half.

16 X Q. Longer than that has it not been so?

A. Perhaps so.

17 X Q. Has not that been true, to a greater or less extent, ever since the Goodyear Rubber Company has been organized, in 1873?

A. To a greater or less extent it has been so; but as to the time you mention I cannot say—the early part of that time—that is, starting from the organization of the Goodyear Rubber Company, in 1873; but the confusion has been far greater within the last year or year and a half.

18 X Q. The business of the companies has been very much increased within that time, has it not?

A. I cannot say anything of the business of the Goodyear's I. R. Glove Manufacturing Company.

19 X Q. In your case it has been so?

A. In our case there has been an increase, no doubt.

20 X Q. Then I understand you that you cannot speak at the present time definitely with regard to whether the Goodyear Rubber Company received orders and letters which were, in fact, intended for the Goodyear's India Rubber Glove Manufacturing Company at about the time of its organization, but that has been true to a greater or less extent since the early time of its organization; is that what I understand you to say?

A. I don't think that is what I said.

21 X Q. Is that the fact?

A. I don't think it is.

22 X Q. Is it not a fact that your company have received letters and orders intended for the Glove Company, as you call it, for a good many years?

A. A good many years is very indefinite.

23 X Q. Five or six years?

A. I could not answer that question.

24 X Q. You would not undertake to say whether it was so or not, then?

A. No, sir

80 25 X Q. Would you undertake to say whether this state of facts has not existed to a greater or less extent from the very commencement of the Goodyear Rubber Company?

A. I have already stated that I could not answer the question with regard to the early part of the time you mention, commencing with 1873, I think it was.

26 X Q. Why can't you answer the question in regard to the early part of the time I mention, commencing 1873?

A. Because at that time such matters did not come under my personal attention.

27 X Q. For how long a time have such matters come under your personal attention?

A. That I could not answer; don't know.

28 X Q. Is it also true that for a number of years the Goodyear Rubber Company have from time to time received from the Goodyear's Glove Company, as you call it, letters and orders that have been sent to them by mistake?

A. Sometimes they have sent us letters intended for us, but the instances are very few, although we know instances where correspondence, etc., intended for us has never been sent to us.

29 X Q. So far as you know, then, the trouble mostly consisted in the receipt by you of orders not intended for you—as far as your knowledge extends?

A. No, sir.

30 X Q. You say you know of but very few instances where letters or orders have been sent to you by them, but you know a great many that were intended for them that were sent to you; that is true, is it not?

A. I have not stated it just that way.

31 X Q. That is true, is it not?

A. Perhaps so.

32 X Q. I take your qualified admission.

A. I would like to have that question repeated again so that I can understand it?

33 X Q. (Repeated:) Have you any further answer to make to that question?

A. My answer there was made having reference to a previ-
81 ous answer that I made to the effect that we know of other instances of correspondence, etc., intended for us that has never been sent to us.

By Mr. MACFARLAND:

Q. Received by the Glove Company?

A. Yes, sir; which we never received.

34 X Q. So far as your personal knowledge goes you know of nothing except what you have received, do you?

A. Received personally, do you mean?

35 X Q. Yes, sir; I mean received by the Goodyear Rubber Company, to your knowledge. You know personally of no orders or letters that have been received by the Goodyear's India Rubber Glove Manufacturing Company that were intended for you except what have been in fact sent to your office, do you?

A. You are asking simply about orders and letters?

37 X Q. Yes; I am asking for your personal knowledge; I don't want you to state general hearsay.

A. There were other instances.

38 X Q. Have you any personal knowledge of any instances of letters, orders, or directions of any kind which were sent to the Glove Company and which you think were not intended for them except

such letters, orders, or directions as have actually been sent to your office? I ask for your personal knowledge and not hearsay.

A. I am well satisfied that there have been such instances.

39 X Q. Did you understand my question to ask for your personal knowledge?

A. I did, sir.

40 X Q. Then why did you undertake a statement about your mental satisfaction; don't you know that it is not competent?

A. I don't know it.

41 X Q. I will inform you now that it is incompetent, and will you please confine the answer to your personal knowledge and answer me?

A. I don't know just how to answer you; I don't know what "your personal knowledge" is.

42 X Q. Maybe you know what personal knowledge is?

A. I think I do.

82 43 X Q. Do you know what hearsay is?

A. Yes, sir; I think so.

44 X Q. Are the instances few or many which you know of by your personal knowledge (not by hearsay) of orders sent to the Goodyear's India Rubber Glove Manufacturing Company which were in fact intended for your company?

A. Your former question included orders and everything else; this question simply includes orders.

45 X Q. I will make this question include orders or letters.

A. I could not say how many instances there were.

46 X Q. Are they few or many.

A. I don't know that I could answer that question.

47 X Q. Don't know whether they are few or many?

A. I am unable to answer that.

48 X Q. You do know as a fact that a good many orders intended for the Goodyear's India Rubber Glove Manufacturing Company have been received by your company, do you not?

A. Well, a good many is a very indefinite number; I know there are some.

49 X Q. Do you know whether many or few?

A. I could not tell you how many or how few.

50 X Q. I did not ask you to, did I?

A. I don't know either from my personal knowledge.

51 X Q. I asked you whether you could tell me whether there were many or few; will you please do so?

A. I think there has been quite a number.

52 X Q. What is it that causes the confusion between the names of these two companies, according to your experience?

A. It is mostly in the fact of their copying very nearly our name of Goodyear Rubber Company.

53 X Q. It is the similarity of the names, you think?

A. Yes, sir.

54 X Q. What is the particular point of similarity which you think produces the confusion?

A. It is the similarity between our names, "Goodyear Rub-
83 ber Company" and the words "Goodyear Rubber M'f'g Company."

55 X Q. The two names are distinguishable, are they not?

A. To a careful student, yes.

56 X Q. What is it in the similarity, do you think, that particularly causes the confusion?

A. Well, it is the similarity itself, in the first place, and the fact of abbreviating the word manufacturing in the letters m'f'g.

57 X Q. Do you think it is in the use of the word "Goodyear's" at all?

A. I think that leads to confusion.

58 X Q. That is the leading part of the name, is it not?

A. It is the largest word in the name.

59 X Q. And the most prominent?

A. Yes, sir.

Complainant's counsel objects and directs witness not to answer the question.

Counsel for the defendant insists upon his right to cross-examine the witness upon the question of the reasons of confusion that he alleges exists and has existed, as he has attempted to give such reasons in his direct examination by assigning as a reason the employment of a particular name, and will move to suppress the deposition of the witness upon the hearing by reason of the instructions to him not to answer the question.

Counsel for the plaintiff states that the witness under examination has not been called or examined by the plaintiff in respect to the subject to which the foregoing observations of the defendant's counsel refer, and that he is not the witness of the plaintiff on the subject of the identity of names or as to what constitutes an identity of names, nor has he been examined in chief on that subject; and, further, that the question as to what constitutes a similarity
84 of names is not one for the opinion of any witness, but is a question of law arising upon the fact when the names in question are ascertained.

60 X Q. You spoke in your direct examination of the name of the Glove Manufacturing Company, as you call it, having been abbreviated in business transactions. For how long have you known abbreviated names of the Goodyear's India Rubber Glove Manufacturing Company to be used in business transactions with them, either in addressing them or by the company themselves, in——

A. (Interrupting.) Ever since I have known anything about the Goodyear's India Rubber Glove Manufacturing Company.

61 X Q. You said that according to your experience the abbreviation of their full name, by which they were generally known in the trade, was simply as "Glove Company;" is that what you meant to be understood to say?

A. Yes, sir; with perhaps the use of the word "The"—"The Glove Company."

62 X Q. Did they not generally use the word "Goodyear's" also?

A. Who do you mean by they?

63 X Q. The Goodyear India Rubber Glove Manufacturing Company; you said they were known simply by the name Glove Company. Now, I ask whether they did not also, in connection with that, use the word "Goodyear?"

A. My difficulty is with your use of the word "they."

64 X Q. I am referring all the time to the Goodyear's India Rubber Glove Company; how they were known and addressed by the trade, and how they called themselves, and whether they did not also use the word "Goodyear" as a part of their name when they abbreviated it.

A. In the majority of instances they were known and spoken of as the Glove Company.

65 X Q. Did you ever know of their being known or addressed as the Goodyear I. R. G. Co.?

A. Yes, sir.

85 66 X Q. How long have you known of their being known nd addressed by that title in this way?

A. Well, they have been addressed by that as long as I have known them.

67 X Q. For twenty years?

A. Yes, sir; but generally spoken of as the Glove Company.

68 X Q. Those other abbreviations in which the only full word used was the word "Goodyear's" and all the rest of the words were abbreviated—was that used quite frequently?

A. No, sir; I think not.

69 X Q. Was used to some extent?

A. I think so.

70 X Q. Did you ever know of their being known and addressed simply as "Goodyear's G. C.?"

A. I do not recall any instance at the moment.

71 X Q. Quite possible they may have been so known and addressed very often without your knowing it, is not it?

A. Am I to testify to possibilities?

72 X Q. I want to know if your experience is such as to enable you to say that they may have been very often so addressed.

A. I don't think I understand what you want.

73 X Q. My question is whether they may not have been very generally addressed or spoken of as the Goodyear's G. Co. in the trade without your knowledge.

A. I think I should have known if it was a general designation.

74 X Q. You have known it as being a designation, have you not?

A. I think I said a moment ago I did not recall any instance.

75 X Q. Won't you look at this bill and state if that is not an order which you sent to them yourself and addressed them in that way in 1869?

A. That seems to have been an order and was addressed to them in 1869 by my own house, but it is not in my handwriting.

76 X Q. Whose handwriting is it?

A. I think a Mr. Baldwin, who was formerly in my employ.

86 The order was offered in evidence and marked Defendants' Vermilye Order, Ap'l 14th, 1883, J. A. S., Ex'r.

The order was as follows:

Office of Wm. G. Vermilye, India-rubber goods of all descriptions, No. 6 Park Place.

NEW YORK, *July 17th*, 1869.

*Mr.* Goodyear G. Co.:

Please deliver immediately at No. 6 Park Place the following goods:

1 steel punch.

(Signed) W. G. VERMILYE.
B.

77 X Q. You produced a receipt book which contains receipts for money paid; who kept that receipt book—whose receipt book is it?

A. My own.

78 X Q. You were asked in reference to that receipt book the following question: "Will you refer to such receipts and to all such receipts as may indicate how they (the Goodyear's India Rubber Glove Manufacturing Company) were in the habit of abbreviating their name at this time?" Did you understand that that question called for all the receipts of the company?

A. I did not.

79 X Q. You only picked out such receipts, then, in which the name is abbreviated by using the word Glove; is that so?

A. I cannot say; the receipts are there and will answer for themselves.

80 X Q. Won't you look in the same book and state whether you do not find other receipts than those which you read in
87 evidence in which the company signed its name "Goodyear's I. R. G. M'f'g Co.," and which you omitted to read at the last hearing.

A. There is a receipt as you describe it.

81 X Q. What is the date?

A. October 12th, 1868.

82 X Q. Will you read the full receipt?

A. "Received, New York, October 12, 1868, from Mr. W. G. Vermilye, three $\frac{81}{100}$ dollars in full to the first instant. Goodyear's I. R. G. M'f'g Co. Folsom."

83 X Q. Now, look under date of January 22d, 1870, and see if you find another receipt which you omitted to quote in the last hearing.

A. Yes, sir.

84 X Q. Please read that.

A. "Received, N. Y., January 22d, 1870, from Mr. W. G. Vermilye, forty-seven $\frac{61}{100}$ dollars in full to the first instant. Goodyear's I. R. G. M'f'g Co. Folsom."

85 X Q. How long have you been connected with the Goodyear Rubber Company?

A. I could not give you the exact date.

86 X Q. Were you connected with it at the time of its organization?

A. I think I was, but I cannot say positively.

87 X Q. Were you ever connected with the Rubber Clothing Company?

A. Yes, sir.

88 X Q. What was your position with the Rubber Clothing Company?

A. That of a clerk.

89 X Q. When were you with them?

A. Do you mean when did I go with them?

90 X Q. Yes; and when did you leave; when did you stop?

A. I think it was in 1873 that I went with them.

91 X Q. How long did you continue with them?

A. Up to the present time.

92 X Q. What is your office in the Rubber Clothing Company now?

A. I have no office in the Rubber Clothing Company.

93 X Q. You are a clerk for them?

A. Yes.

94 X Q. You went into the Rubber Clothing Company as a clerk at the same time as you became connected with the Goodyear Rubber Company?

88

A. I did not say that.

95 X Q. I ask if that is so?

A. I think not.

96 X Q. Are you sure not?

A. I am not sure enough to swear to it, but I think not.

97 X Q. What was your position in the Rubber Clothing Company in 1873?

A. Clerk.

98 X Q. In what branch of business; what were your duties?

A. Well, I had more particularly to do with orders.

99 X Q. What was your position in the Goodyear Rubber Company in 1873?

A. I am unable to say.

100 X Q. As early as 1868 did you know a concern in the city of New York known as the Goodyear Rubber Works?

A. I don't remember any such concern.

101 X Q. Won't you look at the bill in your receipt book, dated in 1868, and state whether you do not wish to correct your last answer?

A. Yes, sir.

102 X Q. You did know such a concern?

A. Yes.

103 X Q. Did you have dealings with it?

A. Yes, sir.

104 X Q. Was that the business name of Mr. Hodgman's concern at that time?

A. From this printed statement I should say yes, although he was generally known as "Hodgman's."

105 X Q. That bill, to which you have referred in your receipt book, was received by you at the time it bears date, I suppose?

A. I suppose it was.

The said bill in the receipt book was marked in evidence Def'ts' Exhibit Goodyear Rubber Work's Bill, April 14th, 1883, J. A. S., Ex'r, and is as follows:

89 *Monthly Statement.*

A. D. & C. A. Hodgman.

NEW YORK, *Nov.*, 1866.

Mr. W. G. Vermilye to Goodyear Rubber Works, dr., No. 27 Maiden Lane.

Terms, cash—bankable funds.

Oct. 7. To merchandise as per invoice ---------- $49 00

Paid. A. D. & C. A. HODGMAN.
F. M. BROWN.

By Mr. MACFARLAND:

1 Re-D. Q. There are a great many receipts in this receipt book, are there not?

A. Yes, sir.

2 Re-D. Q. Embracing a period between April 8, 1868, and August 26, 1870?

A. I believe so.

3 Re-D. Q. Verify the fact.

A. (Looking at book.) Between April 8, 1868, and August 26, 1870.

4 Re-D. Q. Are there a good many receipts of the Goodyear's India Rubber Glove Manufacturing Company in this book?

A. Yes, sir; quite a number.

5 Re-D. Q. Is there any single one of those receipts signed with the name Goodyear Rubber Company?

A. I think not.

6 Re-D. Q. Is there any one of those receipts signed with the name of the Goodyear Rubber M'f'g Company?

A. I think not, sir.

7 Re-D. Q. I understand you to say that you were in business for yourself prior to 1873, in the rubber goods business.

A. Yes; for myself and as a member of a firm. First I was in business for myself, then I was a member of the firm of Post, Vermilye & Co.

8 Re-D. Q. When did you first engage in the rubber business, in any capacity?

A. In 1859 or 1860, as near as I can remember.

90 9 Re-D. Q. In what way do you know that the Goodyear's India Rubber Glove Manufacturing Company ever received any letters, orders, checks, or anything else intended for the plaintiff company that they did not deliver to the plaintiff company?

A. I don't know just how to explain.

10 Re-D. Q. Just state in what way.

A. Well, by corroborative correspondence.

11 Re-D. Q. Correspondence that came under your notice?

A. Yes, sir.

12 Re-D. Q. Correspondence with what class of people—your customers?

A. Customers; yes.

13 Re-D. Q. And that correspondence is the source of your information on that subject?

A. That is one of the sources.

14 Re-D. Q. What other source, if any?

A. Reports from our travelers.

15 Re-D. Q. Any other sources?

A. I do not think of anything else at present.

Defendant's counsel moves to strike out all the evidence of the witness on this point as founded exclusively on hearsay evidence.

16 Re-D. Q. When did you become assistant secretary of the Goodyear Rubber Company?

A. I cannot tell the date.

17 Re-D. Q. As near as you can?

A. Well, I should not dare locate that date.

18 Re-D. Q. I don't ask you to locate it; give it to me within ten years if you can.

A. Well, somewheres from three to five years since. I am uncertain as to the date.

19 Re-D. Q. What are your duties in that capacity?

A. The endorsement of checks and such duties as devolve upon the secretary in his absence.

20 Re-D. Q. Previous to that time what was the general nature of your duties in connection with the business of the company?

A. Clerk.

91 21 Re-D Q. Salesman?

A. Not in the general acceptation of the term.

22 Re-D. Q. A general clerk?

A. Yes; a general clerk.

23 Re-D. Q. Previous to that time was your position such as to bring specially to your notice the confusion in names between the plaintiff and the defendant companies?

A. No, sir.

24 Re-D. Q. The facts in relation to that matter would more naturally fall under the notice of others?

A. At that time; yes, sir.

25 Re-D. Q. I understand you to say that you were unable to state, when pressed touching the confusion of the names and the mis-

takes growing out of the confusion of the names, to what extent it occurred in the early part of the corporate existence of the plaintiff company?

A. Yes, sir.

26 Re-D. Q. Are you able to state the various ways in which the Goodyear's India Rubber Glove Company changed and modified its name and style from time to time from 1873 down to the present and the times when such modifications and changes took place, or did not that matter come under your personal notice?

A. It did not come under my personal notice except in a very limited way.

27 Re-D. Q. Mr. Shepard, I think, has been the president of the plaintiff company during its existence?

A. Yes, sir.

28 Re-D. Q. And he has had in that capacity the executive management of the affairs of the company?

A. Mainly; yes, sir.

29 Re-D. Q. Do you remember how many places of business, if more than one, the Goodyear's India Rubber Glove Manufacturing Company had in this city in 1873?

A. My present recollection is that they then occupied one store only, 205 Broadway.

30 Re-D. Q. Did you say, on cross-examination, that you had or had not noticed the various changes and modifications in
92 their signs at that place since 1873?

A. I do not think anything was said on that subject. I do not recall it at the moment.

31 Re-D. Q. Do you remember any changes or modifications in their signs after the organization of the Goodyear Rubber Company and between that time and the present?

A. Yes, sir; there have been modifications and changes.

32 Re-D. Q. If you remember them with sufficient distinctness to state you may state what changes were made during the period embraced in the question.

Objected to, as the witness has already said he did not remember what the signs were in question prior to 1873. Therefore it is impossible for him to state what the modifications were.

A. I do remember some changes and modifications.

33 Re-D. Q. State what they have been.

A. One was in the sign that is shown in a photograph that was exhibited here at the previous hearing as being the Mercer-street front sign.

34 Re-D. Q. What was that?

A. The particular feature of that sign was two or three words printed very much smaller than the prominent words of the sign.

35 Re-D. Q. Do you mean letters or words?

A. Words, I think.

36 Re-D. Q. What words were they?

A. India, I think, is one word. I think glove is another word that has been in small letters.

37 Re-D. Q. Where is that sign now that is exhibited on the photograph?

A. Over the windows of the first floor of the Mercer-street front of the Goodyear's India Rubber Glove Manufacturing Company.

38 Re-D. Q. Was the sign located elsewhere at one time?

A. Yes, sir.

39 Re-D. Q. Where?

A. It was the front sign on the Broadway front on a store that they occupied; I think the number was 488 and 490 Broad-
93 way; it was on the northeast corner, on the right-hand side going up and on the left-hand side going down Broadway, corner Broome street.

40 Re-D. Q. That was a different store from the one exhibited on the photograph?

A. Different store, but the same sign.

41 Re-D. Q. What other signs besides that did they use on the building to which you last referred?

A. Their old building, corner of Broome and Broadway?

42 Re-D. Q. Yes.

A. I do not recollect any other particular sign sufficiently well to swear to it.

43 Re-D. Q. When did they move from that place to their present place?

A. In the neighborhood of January or February, 1882.

44 Re-D. Q. And was there then different signs adopted for the present place of business?

A. Yes, sir.

45 Re-D. Q. Different from those they had before employed?

A. I think so.

46 Re-D. Q. Are you quite sure of it?

A. Yes; I think I am.

47 Re-D. Q. Now, state what they were.

A. There was a wedge-shaped sign placed on the stoop.

48 Re-D. Q. On the sidewalk, is it not?

A. One step off the sidewalk, on the stoop. It reads "Goodyear's Rubber M'f'g Co." There is a sign over the door, that I do not think that I ever saw before, with a small word in Goodyear's Rubber M'f'g Company.

49 Re-D. Q. Some abbreviation of manufacturing?

A. I think it is. The photograph that was presented here a few days ago is the exact lettering, and I refer to those as to the exact lettering of these signs that I have been describing.

50 Re-D. Q. I think you said on cross-examination that the confusion of names and the mistakes in delivery of letters and
94 correspondence had been much greater since 1882 than before. Did you so state?

A. Yes, sir.

51 Re-D. Q. So far as you remember was the name Goodyear's Rubber M'f'g Co. a name made prominent on any sign of the Goodyear's India Rubber Glove Company prior to 1882 and its removal to its present place of business?

A. I do not recall any prominence given to that name.

By Mr. BETTS:

1 Re-X Q. You spoke of the sign which was used on the Broadway front of the defendant company, Broadway and Broome street building; do I understand you to say that the prominent words in that sign were Goodyear's Rubber M'f'g Co.?

A. Yes, sir; taken in reference to these photographs that I referred to, I would not pretend that I have the words exactly right.

2 Re-X Q. As you remember it, the prominent words used in that sign were the words "Goodyear's Rubber M'f'g Co.," were they not?

A. That is as I remember it; yes, sir.

3 Re-X Q. For how long a time was that sign upon the Broadway front of that building prior to the removal of the company?

A. I could not tell you; I do not know when it was put up.

4 Re-X Q. As far as you know it was there all the time the company was in that building?

A. I do not know anything to the contrary.

5 Re-X Q. They were there as much as five years, were they not?

A. I could not tell you.

6 Re-X Q. There is no other prominent sign on that building that you remember?

A. I could not recollect any other sign sufficiently well to swear to it.

7 Re-X Q. So that the only prominent sign is the one of which you spoke, in which the prominent words were Goodyear's Rubber M'f'g Co.?

95 A. The sign was the Goodyear's India Rubber Glove Manufacturing Company.

8 Re-X Q. But the words India and Glove were very small type?

A. As I recollect it, referring to that photograph.

9 Re-X Q. Some questions were asked you with regard to the nature of your connection with the Goodyear Rubber Company; do I understand you to say that you were clerk in that company before you became assistant secretary?

A. Yes, sir.

10 Re-X Q. For how long a time were you clerk—since 1873?

A. I tried to make that point very plain; I cannot tell you the time when I commenced my connection with the Goodyear Rubber Company.

11 Re-X Q. You said you were under the impression that you were with them from about the time of their organization.

A. If I said that I will stick to that; at the same time, I cannot give you the time definitely, in years.

12 Re-X Q. From the time you were clerk and until you became assistant secretary?

A. Yes, sir.

14 Re-X Q. What was the nature of your duties for that company?

A. I don't know just how to describe it; a clerk, I think, covers the designation.

15 Re-X Q. Did you take orders?

A. Do you mean in respect of soliciting orders?

16 Re-X Q. In their store?

A. I took orders, yes.

17 Re-X Q. Did you do anything else except take orders?

A. Yes, sir.

18 Re-X Q. What else?

A. Saw that the goods were got out.

19 Re-X Q. An ordinary clerk in a store?

A. Yes, sir.

20 Re-X Q. Where was the store where you were so employed as clerk of the Goodyear Rubber Company?

A. They have occupied different stores.

21 Re-X Q. When you first went with them, where was their store?

96 A. I cannot tell you where they were when I first went with them; I have tried to make that answer very plain.

22 Re-X Q. Can you name any one place where you were with them as a clerk?

A. I should think that number was 365 Broadway; I am not positive about that.

23 Re-X Q. I understand you to say that you were also a clerk of the Rubber Clothing Company?

A. Yes, sir.

24 Re-X Q. Was that store at the same place?

A. At what time?

25 Re-X Q. 365 Broadway—at the time you were there as a clerk?

A. Yes, sir; I think it was.

26 Re-X Q. Was there any distinction between your duties as clerk for the Rubber Clothing Company and as clerk for the Goodyear Rubber Company?

A. Why, yes.

27 Re-X Q. What was the distinction?

A. At one time I would be doing something for one and at another I would be doing something for another.

28 Re-X Q. Did they have a different stock of goods in the same store?

A. Yes, sir.

29 Re-X Q. What was the distinction between the two stocks?

A. Ownership.

30 Re-X Q. Did they keep them in different places?

A. What do you mean by different places?

31 Re-X Q. Were they kept separate?

A. Yes, sir.

32 Re-X Q. Did they deal in the same lines of goods?

A. To a certain extent, yes, sir; in other directions, no.

33 Re-X Q. Did you have double salary?

A. Well, I think I will decline to answer any question about salary.

Mr. MacFarland: I do not ask you to decline to answer; indicate precisely your relation to these two corporations.

WITNESS: I prefer to decline to answer that question.

97 34 Re-X Q. Where are you employed now?

A. I have already answered that question.

35 Re-X Q. What number Broadway?

A. 487.

36 Re-X Q. Corner of Broome street?

A. Yes, sir.

37 Re-X Q. Both of these companies have a store at this place now?

A. Yes, sir.

38 Re-X Q. Both have a stock of goods in the same store?

A. Yes, sir.

39 Re-X Q. The signs of both companies over the same door?

A. I think so; yes, sir.

40 Re-X Q. One above the other or side by side?

A. I think they are there; I cannot tell you just how. They are on the building. The relative positions I do not pretend to explain.

41 Re-X Q. Is one part of the store kept separate for the Goodyear Rubber Company's goods and another for the Rubber Clothing Company's goods, or are all the goods together?

A. There are separate parts of the store used for the different goods.

42 Re-X Q. The companies deal in the same line of goods?

A. To a certain extent.

43 Re-X Q. Where they are dealing in the same lines of goods are their goods in the same line kept together?

A. The goods are kept separate.

44 Re-X Q. Of course the individual articles are separate from each other, but are they kept in separate parts of the store?

A. Separate parts of the store.

45 Re-X Q. Describe what the separation is; is a part railed off?

A. There is no real rail; one portion of the store is set aside for the goods of one company and there is nothing else in that immediate vicinity but their goods, and there are other parts of the store that are set aside for the other company.

46 Re-X Q. What do you mean by immediate vicinity?

A. I mean if that table is set aside for the Goodyear Rubber Company and this table for the goods of the Rubber Clothing Company that they are not in the immediate vicinity of each other.

98 47 Re-X Q. Then they may be separated only by a foot or two?

A. Yes.

48 Re-X Q. Are there separate sets of clerks kept for the different companies?

A. Yes, sir.

49 Re-X Q. Are there one set of clerks for the Goodyear Rubber Company and another set of clerks for the Rubber Clothing Company, or do the same clerks attend to the business of both companies?

A. There are different sets of clerks.

50 Re-X Q. The clerks of the Goodyear Rubber Company do not sell the Rubber Clothing Company's goods at all?

A. They do sometimes.

51 Re-X Q. Is it not the fact that there are a number of clerks in the store of whom part are paid by the Goodyear Rubber Company and part by the other company, and they do whatever business comes in the store, irrespective of what company it is?

A. That is not the fact.

52 Re-X Q. What is the fact?

A. The contrary to that.

53 Re-X Q. Do you mean that the Rubber Clothing Company's clerks stand on one side and the Goodyear's Rubber Company on the other and do not have any relation to each other?

A. I mean to say that the Goodyear Rubber Company's clerks and the Rubber Clothing Company's clerks do not attend to each other's business; there are some exceptions.

54 Re-X Q. What are the exceptions?

A. For instance, a certain clerk is out and some one else who is in the house attends to the business for that clerk during his temporary absence. It is a mere matter of convenience; but when the first one is in the house he is always the one that attends to that business.

55 Re-X Q. Are there any of the clerks who, like yourself, are in the employ of both companies?

A. Yes, sir.

99 56 Re-X Q. A number?

A. Some; I could not tell you how many.

57 Re-X Q. Could you tell how many are not in the employ of the company?

A. That would be equivalent to telling you how many there are.

58 Re-X Q. You do not remember how many are not in the employ of both companies or how many are in the employ of both companies?

A. No, sir.

59 Re-X Q. Do you remember the proportion?

A. Never figured out the proportion.

60 Re-X Q. Can't give us any idea of the proportion?

A. No, sir.

By Mr. MACFARLAND:

52 Re-D. Q. In speaking of the Rubber Clothing Company, its business, stock of goods, and clerks, you have referred to your Broadway store?

—. Yes, sir.

53 Re-D. Q. And you referred, I suppose, to your Broadway store, did you not?

A. We have two Broadway stores.

54 Re-D. Q. Did you refer to both of them? Has the Rubber Clothing Company office accommodations and business accommodations at both of your Broadway stores?

A. No, sir.

55 Re-D. Q. At one?

A. At one.

56 Re-D. Q. At which Broadway store?

A. 487 Broadway is what I have been talking about.

57 Re-D. Q. And at that one of your stores the Rubber Clothing Company has office accommodations and, to a certain extent, business accommodations for the storage and sale of its merchandise?

A. Yes, sir.

58 Re-D. Q. Are the Rubber Clothing Company and the Goodyear's Rubber Company two distinct corporations?

A. Yes, sir.

59 Re-D. Q. And they have distinct business interests?

A. They have.

100 60 Re-D. Q. Distinct accounts?

A. They have.

61 Re-D. Q. Distinct sets of merchandise?

A. They have.

62 Re-D. Q. They are friendly corporations and not rivals?

A. They are.

63 Re-D. Q. You spoke of their dealing, to a certain extent, in common in certain lines of goods. What particular lines of goods were those?

A. General lines of rubber goods.

64 Re-D. Q. The Goodyear Rubber Company deals in a great many lines of goods, I suppose, that are not common to the other; am I right in that supposition?

Objected to as leading.

A. They deal in similar goods, both companies.

65 Re-D. Q. In every respect, or don't you know?

A. I think that question is answered by my answer that they deal in similar lines of goods.

66 Re-D. Q. In respect to the magnitude of the business of the two corporations, which is the greater?

A. I would not undertake to answer that question from positive information.

By Mr. BETTS:

61 Re-X Q. How long have the Goodyear Rubber Company and the Rubber Clothing Company had their stores together at the corner of Broadway and Broome streets?

A. I think it was in January or February, 1882.

62 Re-X Q. Never been at that position before, have they; never been on the corner of Broadway and Broome streets before?

A. Not to my knowledge.

63 Re-X Q. Where had those two companies had their stores prior to that time?

A. 341 Broadway.

63½ Re-X Q. They had their stores together at 341 Broadway, then, the same way as they have now?

A. Together, with the distinction I made before.

101 64 Re-X Q. They both dealt at that place in general lines of rubber goods?

A. Yes, sir; more or less.

65 Re-X Q. Before they were at 341 Broadway where were the two companies?

A. I think it was 365.

66 Re-X Q. Do you remember how long they were at 341?

A. I do not.

67 Re-X Q. Could you approximate the number of years?

A. I should guess it to be about three or four years.

68 Re-X Q. Prior to that time they were at 365?

A. Yes.

69 Re-X Q. And there the two companies had their store together also?

A. Yes, sir.

70 Re-X Q. Prior to being at 365 where were they?

A. I think it was 363 and 361.

71 Re-X Q. And there they had their stores together, did they?

A. I cannot answer that question.

72 Re-X Q. Were you not with them then?

A. I was with the Rubber Clothing Company; I have already stated explicitly that I cannot tell you when I commenced with the Goodyear Rubber Company.

73 Re-X Q. What is the inability to state; why can't you fix that?

A. Because I cannot remember it.

74 Re-X Q. Is there not any change in your occupation that would enable you to fix that occurrence?

A. I am unable to locate.

75 Re-X Q. As long as you have been with the companies they have had their New York stores together, have they not?

A. I think the answer to that is no.

76 Re-X Q. Why do you think so?

A. Because I think that is the correct anwer.

77 Re-X Q. What leads you to that conclusion?

A. I don't know how to answer that.

78 Re-X Q. Could you give us any facts on which you based that answer, no?

A. Yes.

102 79 Re-X Q. What is it?

A. The wording of the question.

80 Re-X Q. What is the nature of the question?

A. As it is in my mind, the only answer to that question is no.

81 Re-X Q. What is it in the wording of the question that makes you answer no?

A. The question, if I understand, is, As long as I have been with those companies have they had their offices together? My impression is, no.

82 Re-X Q. In 1873 I think you said you were with the Rubber Clothing Company, were you not?

A. Yes, sir.

83 Re-X Q. Where were you then?

A. I think I have answered that question once.

84 Re-X Q. Answer it again, so that we may get it on the record in this connection?

A. I think it was at 361 Broadway.

85 Re-X Q. Where was the Goodyear Rubber Company's store at that time, 1873?

A. I am unable to say whether they had a store at that time or not.

86 Re-X Q. Do you remember any time when they did not have a store?

A. Yes, sir.

87 Re-X Q. When was that?

A. Before they were organized.

88 Re-X Q. Since they have been organized, do you remember any time?

A. I am not familiar with the early history of the organization of the Goodyear Rubber Company, and consequently a good many such questions I am unable to answer.

89 Re-X Q. Do you remember whether they were organized in 1873?

A. I do not remember.

W. G. VERMILYE.

Sworn before me—

JOHN A. SHIELDS, *Examiner, &c.*

Adjourned to Wednesday, April 18th, 1883, at 3 o'clock p. m.

103 APRIL 18TH, 1883.

Adjourned to April 25th, 1883, at 11 a. m.

APRIL 25th, 1883.

Adjourned to April 30th, 1883, at 11 o'clock.

NEW YORK, *April 30th*, 1883.

Met pursuant to adjournment.

Present: Counsel as before.

FREDERICK M. SHEPARD recalled.

By Mr. MCFARLAND:

45 Re-D. Q. I hand you photograph representing the Broadway front of the building occupied by the Goodyear's India Rubber Glove Manufacturing Company and ask you whether there is exhibited on that photograph the sign on the sidewalk which you have already mentioned.

A. It exhibits a sign set up on the sidewalk, an additional sign to the other photograph, which did not include that sign.

Photograph is offered in evidence and marked Plaintiff's Exhibit No. 28, April 30th, 1883, J. A. S., examiner.

46 Re-D. Q. Mr. William G. Vermilye is in the employment of the plaintiff, The Goodyear Rubber Company?

A. Yes, sir.

46½ Re-D. Q. What are his general duties in that employment?

A. His general duties are to make the purchases of rubber and other material for the factory.

104 47 Re-D. Q. He is also in the employment of other companies, is he not?

A. He is the treasurer of the Union Rubber Company and is a clerk for the Rubber Clothing Company.

48 Re-D. Q. State his duties in those several relations.

A. His duties, so far as the Goodyear Rubber Company and the Union India Rubber Company are concerned, are the purchase of rubber and other materials for manufacturing and the general oversight and supervision of the factories. He also makes purchases of goods for the Western stores of the Goodyear Rubber Company and their other stores in New York. He also makes purchases of goods for the Rubber Clothing Company. He is assistant secretary of the Goodyear Rubber Company, his official duties being confined to the drawing of checks or endorsing them in the absence of the president and secretary.

49 Re-D. Q. He has little to do with the sales of goods for that company?

A. He has next to nothing to do with the sales for any company; only very rarely he sells some special lines, usually imperfect goods; he looks after the manufacture of goods; he don't look after the sales of them.

50 Re-D. Q. Does he have a distinct compensation from each of these corporations?

A. He does.

51 Re-D. Q. You have already stated that the Goodyear Rubber Company and the Rubber Clothing Company have offices together at the Broadway store.

A. The Goodyear Rubber Company have had an office or place of business at the stores of the Rubber Clothing Company, and at that place they deal exclusively in enameled oil-cloths and in gas tubing.

52 Re-D. Q. They do not, in the same place, deal in the same lines of goods?

A. They do not; they have other places of business in New York, one at the corner of Franklin street and Broadway and

105 one at 57 Maiden Lane, where they deal in rubber goods. The Rubber Clothing Co. has one place of business now at 487 Broadway, where it deals in rubber goods generally.

53 Re-D. Q. So while both corporations deal to some extent in the same lines of goods they deal in those lines of goods at different places?

A. Yes, sir.

54 Re-D. Q. Are you able to describe the most prominent business sign of the Goodyear's India Rubber Glove Manufacturing Company at its place on Broadway, in and before the year 1873?

A. The principal sign over the door of the office of the Goodyear's India Rubber Glove Manufacturing Company, at 205 Broad-

way, where it now is, also—the principal letters read, "Goodyear's Rubber Goods;" the smaller letters I do not have distinctly in mind; they are somewhat obscure

55 Re-D. Q. This was the front sign?

A. Yes, sir; on Broadway.

56 Re-D. Q. Over the door?

A. Yes, sir.

Recross-examination by Mr. BETTS:

97 Re-X Q. How long have you known this sign, which you have referred to, at the place of business, 205 Broadway?

A. I think for four or five years previous to 1873.

98 Re-X Q. Has that sign ever been changed to the present day?

A. I think not.

99 Re-X Q. The same sign is still there?

A. It is.

100 Re-X Q. No other signs have been put up at that place, to your knowledge, have they?

A. Except at the side of the door—a small sign.

101 Re-X Q. That sign at 205 Broadway has the word "Goodyear's" in large letters at the top of the sign, has it not?

A. Yes, sir.

102 Re-X Q. Then, underneath, in small type, are there not
106 the words "India Rubber Glove M'f'g Co.?"

A. Well, I think likely, sir; there are some words something like that.

103 Re-X Q. Then, at the lower part of the sign there are words in large type, "Rubber Goods?"

A. Yes, sir.

104 Re-X Q. How long has the company had that place of business, 205 Broadway, to your knowledge?

A. I am unable to state exactly, but since the time I have mentioned that the sign was up, and perhaps earlier.

F. M. SHEPARD.

Sworn before me—

JOHN A. SHIELDS, *Examiner, &c.*

Adjourned to Friday, May 4th, 1883, at 11 a. m.

107 COMPLAINANT'S EXHIBIT 1. February 20th, 1883. J. A. S., Examiner.

STATE OF NEW YORK, }
*County of New York,* } *ss:*

Circuit Court of the United States, Southern District of New York.

GOODYEAR RUBBER COMPANY

*vs.*

GOODYEAR'S INDIA RUBBER GLOVE M'F'G COMPANY *et al.*

We, the undersigned, Frederick M. Shepard, of the city, county, and State of New York; Joseph A. Minott, of the city of Orange

and county of Essex and State of New Jersey; and Mellville Lindsay, of the city of Brooklyn, county of Kings, and State of New York, do by these presents, pursuant to and in conformity with the act of the Legislature of the State of New York, passed February 17th, 1848, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," and the several acts of the said Legislature extending the said act and amendatory thereof, associate ourselves together and form a body politic and corporate, and in compliance with the aforesaid act do hereby certify as follows, to wit:

First. The corporate name of the said corporation is the "Goodyear Rubber Company."

108 Second. The objects for which said corporation is formed are as follows, to wit: Manufacturing and dealing in India-rubber and gutta-percha goods and other merchandise.

Third. The capital stock of such corporation shall be five hundred thousand dollars, which shall be divided into equal shares of one hundred dollars each.

Fourth. The said corporation shall commence on the fifteenth day of November, A. D. one thousand eight hundred and seventy-two, and shall continue in existence for the term of fifty years.

Fifth. The number of trustees of the said corporation shall be three, and the following-named persons shall be the trustees, who shall manage the affairs of the said corporation for the first year, to wit: Frederick M. Shepard, Joseph A. Minott, Mellville Lindsay.

Sixth. The said corporation is formed for the purpose of carrying on some part of its business out of the State of New York and in other States of the United States, and the principal place of business of the said corporation shall be in the city, county, and State of New York.

New York, November 15,, 1872.

FREDERICK M. SHEPARD. [SEAL.]
JOSEPH A. MINOTT. [SEAL.]
MELLVILLE LINDSAY. [SEAL.]

109 STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

On this sixteenth day of November, A. D. 1872, before me personally appeared Fredrick M. Shepard, Joseph A. Minott, and Mellville Lindsay, to me known and known to me to be the individuals described in and who executed the foregoing certificate, and they severally acknowledged to me that they executed the same for the uses and purposes therein expressed.

[Seal of Notary Public.]

FREDERICK I. KING,
*Notary Public of the State of New York,*
*in and for the County of New York.*

Endorsed: Filed 20th Nov., 1872.

STATE OF NEW YORK, } ss:
*City and County of New York,* }

I, Charles E. Loew, clerk of the said city and county and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original certificate of incorporation of the Goodyear Rubber Company on file in my office, and that the same is a correct transcript therefrom and of the whole of such original.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 20th day of November, 1872.

CHAS. E. LEOW, *Clerk.*

STATE OF NEW YORK, } ss:
*Office of the Secretary of State,* }

I have compared the preceding with the original certificate of incorporation of the "Goodyear Rubber Company," with acknowledgment thereto annexed, filed in this office on the nineteenth day
110 of November, 1872, and hereby certify the same to be a correct transcript therefrom and of the whole of said original.

Witness my hand and the seal of office of the secretary of state, at the city of Albany, this nineteenth day of November, one thousand eight hundred and seventy-two.

ANSON S. WOOD,
*Dp. Secretary of State.*

COMPLAINANT'S EXHIBIT No. 2. Feb. 20th, 1883. J. A. S., Examiner.

Whereas Goodyear Rubber Company was duly formed and created under and in pursuance of an act of the Legislature of the State of New York, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February 17th, 1848, and the acts amending the same, the term of corporate existence of said company being fifty years from the 15th day of November, 1872; the object for which it was formed being manufacturing and dealing in India-rubber and gutta-percha goods and other merchandise; the amount of its capital stock being five hundred thousand dollars, in shares of one hundred dollars each, of which amount of capital stock $25,000 *dollars* have been paid in, and the number of directors which should manage its affairs being three;

And whereas the directors of said company published a notice, signed by at least a majority of them, in the Daily Register, a newspaper published in the county of New York, in which the principal business office of said company is situated, for at least three
111 successive weeks, beginning on the eleventh day of June, 1879, which notice was in the words and language following, to wit:

"NEW YORK, *June 10th,* 1879.

"A meeting of the stockholders of Goodyear's Rubber Company will be held on the second day of July, 1879, at 10 o'clock in the

forenoon, at the office of said company, No. 341 Broadway, in the city of New York, to determine whether the said company shall reorganize as a full liability company under and avail itself of the privileges and provisions of the act of the Legislature of the State of New York, entitled 'An act to provide for the organization and regulation of certain business corporations,' passed June 21st, 1875.

(Signed) "F. M. SHEPARD,
"GEORGE O. SIMMONS,
"H. H. SHEPARD,
"*Directors.*"

And whereas a printed copy of such notice, addressed to each stockholder of said company at his last known place of residence, was deposited in the general post office of the city of New York, postage prepaid, on the eleventh day of June, 1879, at least three weeks previous to the day fixed upon for holding said meeting:

Now, therefore, we, the undersigned, do hereby certify that in accordance with the foregoing notice a meeting of the stockholders of Goodyear Rubber Company was held on the second day of July, 1879, at ten o'clock, at the office of said company, in the city of New York.

That there were represented in person and by proxy 5,000 shares of the capital stock of the said company; that Mr. F. M. Shepard was called to the chair and Mr Geo. O. Simmons was chosen secretary; that on motion the meeting then proceeded to deter-
112 mine by vote whether the said company should reorganize as a full liability company under and avail itself of the privileges and provisions of the act of the Legislature of the State of New York, entitled "An act to provide for the organization and regulation of certain business corporations," passed June 21, 1875; that the whole number of votes cast was 5,000; that of the number of votes cast 5,000, representing a majority of all the stock of said company, were cast in favor of the company's availing itself of the provisions of said act and organizing under said act as a full liability company.

That Mr. F. M. Shepard, one of the stockholders of said company, then presented to the meeting a resolution in the words and language following:

Resolved—

First. That the name of this company shall be Goodyear Rubber Company.

Second. That the object and nature of the business for which said corporation is formed is manufacturing and dealing in India-rubber and gutta-percha goods and other merchandise, and the manufactory thereof and the locality of its business are in the city and county of New York, State of New York.

Third. That the amount of the capital stock of said company is 500,000 dollars.

Fourth. That the number of shares of which such capital stock consists is 5,000 of 100 dollars each.

Fifth. That the location of the principal business office of said corporation is in the city of New York, in said State.

Sixth. That the duration of the said corporation is for the term of 43 years 4½ months, being balance of unexpired term of original corporation.

Seventh. That the number of directors of said company
113 shall be five, and the names of the directors who shall manage the affairs of the company for the first year are F. M. Shepard, J. A. Minott, George O. Simmons, H. H. Shepard, and Charles B. Coe.

Whereupon, on motion, the said resolution was adopted by a vote of three stockholders, representing a majority of all the stock of said company. That, there being no further business, the meeting then adjourned.

We, the undersigned, chairman and secretary of the meeting above mentioned, hereby certify that the foregoing is a true and correct record of all the proceedings had at such meeting.

In witness whereof we have hereunto set our hands this second day of July, A. D. 1879.

F. M. SHEPARD, *Chairman.*
GEORGE O. SIMMONS, *Secretary.*

STATE OF NEW YORK, }
*City and County of New York,* } ss:

On this fourth day of August, A. D. 1879, before me personally came F. M. Shepard and George O. Simmons, to me personally known and known to me to be the persons described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same for the purposes therein set forth.

In witness whereof I have hereunto affixed my hand and seal of office the day and year above set forth.

[SEAL.] RO. L. HARRISON,
*Notary Public, City and County of New York.*

114 STATE OF NEW YORK, }
*City and County of New York,* } ss:

F. M. Shepard, chairman, and George O. Simmons, secretary, above named, being each duly sworn, each for himself deposes and says that he has read the foregoing record of proceedings subscribed by him, that he knows its contents, and that said record is in all respects correct and true.

F. M. SHEPARD.
GEORGE O. SIMMONS.

Severally subscribed and sworn to before me this 4th day of August, 1879.

[L. S.] RO. L. HARRISON,
*Notary Public, City and County of New York.*

NEW YORK, *June 10th*, 1879.

A meeting of the stockholders of Goodyear Rubber Company will be held on the second day of July, 1879, at 10 o'clock in the forenoon, at the office of said company, No. 341 Broadway, in the city of New York, to determine whether the said company shall reorganize as a full liability company under and avail itself of the privileges and provisions of the act of the Legislature of the State of New York, entitled "An act to provide for the organization and regulation of certain business corporations," passed June 21st, 1875.

F. M. SHEPARD,
GEORGE O. SIMMONS,
H. H. SHEPARD,
*Directors.*

CITY AND COUNTY OF NEW YORK, *ss:*

Robert L. Harrison, being duly sworn, says that he is of full age, and that on the 11th day of June, 1879, he deposited in the gen-
115 eral post office of the city of New York a printed copy of the foregoing notice, addressed to each of the stockholders of Goodyear Rubber Company at their several places of residence, first prepaying the postage thereon, to wit: F. M. Shepard, East Orange, New Jersey; George O. Simmons, 296 Flatbush avenue, Brooklyn, New York; H. H. Shepard, 173 Hicks street, Brooklyn, New York; J. A. Minott, East Orange, New Jersey. Deponent further says that the notice above mentioned was mailed three weeks previous to the day fixed upon for holding said meeting.

RO. L. HARRISON.

Sworn to before me this 28th day of June, 1879.
HERMAN A. RUEBSAMEN,
*Notary Public, N. Y. Co.*

A meeting of the stockholders of Goodyear Rubber Company will be held on the second day of July, 1879, at 10 o'clock in the forenoon, at the office of said company, No. 341 Broadway, in the city of New York, to determine whether the said company shall reorganize as a full liability company under and avail itself of the privileges and provisions of the act of the Legislature of the State of New York, entitled "An act to provide for the organization and regulation of certain business corporations," passed June 21, 1875.

New York, June 10th 1879.

F. M. SHEPARD,
GEORGE O. SIMMONS,
H. H. SHEPARD,
*Directors.*

Ju. 11–1aW4wW.

116 STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

David S. Owen, being duly sworn, saith that he is the principal clerk in the office of The Daily Register, a newspaper printed in the

city of New York; that the advertisement hereto annexed has been regularly published in the said The Daily Register once a week for four weeks successively, commencing on the 11th day of June, 1879,

DAVID S. OWEN.

Sworn to before me this 2d day of July, 1879.

THOMAS J. DUNN,
*Notary Public* (85), *New York.*

NEW YORK, *June 10th*, 1879.

A meeting of the stockholders of Goodyear Rubber Company will be held on the second day of July, 1879, at 10 o'clock in the forenoon, at the office of said company, No. 341 Broadway, in the city of New York, to determine whether the said company shall reorganize as a full liability company under and avail itself of the privileges and provisions of the act of the Legislature of the State of New York, entitled "an act to provide for the organization and regulation of certain business corporations," passed June 21, 1875.

F. M. SHEPARD,
GEORGE O. SIMMONS,
H. H. SHEPARD,
*Directors.*

At a meeting of the directors of the Goodyear Rubber Company, as reorganized under the act of the Legislature of the State of New York passed June 21, 1875, held July 11, 1879, at their office, No. 341 Broadway, New York.

Present: The whole board, viz., F. M. Shepard, J. A. Minott,
117 Geo. O. Simmons, Chas. B. Coe, H. H. Shepard.

F. M. Shepard was appointed president and J. A. Minott was appointed secretary and treasurer.

The following by-laws were unanimously adopted:

1. The number of directors of the corporation shall be five.

2. The term of office of each director shall not exceed one year.

3. Any vacancy in the board of directors or among the officers of the company shall be filled by the remaining directors for the balance of the year and until the next annual election. Any one or more of the directors may be removed at any time by a vote of two-thirds in amount of all the stockholders at any special meeting called for that purpose.

4. There shall be an annual meeting of the stockholders on the second Monday of January in each and every year, at the office of the company, in the city of New York.

5. Special meetings of stockholders may be called by the board of directors, and also upon the request, in writing, of such number of stockholders as may collectively own one-third of the capital stock of the company, upon personal written notice to each stockholder of at least 10 days before such meeting, or upon ten days' notice published in a newspaper published in the city of New York.

6. At all stockholders' meetings a majority of the whole capital

stock of the company shall be required to constitute a quorum for transaction of business.

7. The officers of the company shall be a president, a secretary, and a treasurer. They shall be elected by ballot by the directors, and their powers and duties shall be such as usually pertain to the respective offices.

118 8. Inspectors of election may be appointed by the board of directors at any meeting of the board.

9. These by-laws may be altered, amended, or added to by the affirmative vote of the stockholders representing at least two-thirds of the whole capital stock at any meeting.

On motion, adjourned.

J. A. MINOTT, *Secretary.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

I have compared the preceding with the original certificate of reorganization of Goodyear Rubber Company (under chapter 611, Laws of 1875), with acknowledgment, &c., thereto annexed, filed in this office on the ninth day of August, 1879, and do hereby certify the same to be a correct transcript therefrom and of the whole of said original.

Witness my hand and the seal of office of the secretary of state, at the city of Albany, this ninth day of August, one thousand eight hundred and seventy-nine.

[L. S.]

GEO. MOSS,
*Deputy Secretary of State.*

STATE OF NEW YORK, }
*City and County of New York,* } *ss:*

I, Hubert O. Thompson, clerk of the said city and county and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original certificate of reorganization of Goodyear Rubber Company as full liability company, under act passed June 21st, 1875, on file in my office,

119 and that the same is a correct transcript therefrom and of the whole of such original.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 12th day of August, 1879.

[L. S.] HUBERT O. THOMPSON, *Clerk.*

Endorsed: Filed 12th August, 1879.

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**Complainant's Exhibit No. 6.**

February 20, 1883. J. A. S., *Examiner.*

NEW YORK, Nov. 23, 1880.

R. C. CO.

*BOUGHT OF* **GOODYEAR'S RUBBER M'F'G CO.**

AND

**Goodyear's India Rubber Glove M'f'g Co.**

WAREHOUSES:

**488, 490, & 492 BROADWAY, Cor. BROOME ST.; 205 BROADWAY, Cor. FULTON ST.,**

NEW YORK CITY.

P. O. Box 1424. FACTORIES, NAUGATUCK, CONN. Established 1844.

| | | | |
|---|---|---|---|
| 1½ doz. ½ lg. hvy. Drg. Gloves | 24 00 | 2 00 | |
| | 10, 10, 6 | 47—1 23 | |
| Duplicate. | Net. | | |

Shipped per. Rec. by Mr. Studley.

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**Complainant's Exhibit No. 7.**

February 20, 1883. J. A. S., *Examiner.*

Established 1844.
R. C. CO.

NEW YORK, Ap. 30, 1879.

## *Bought of* Goodyear's India Rubber Glove M'f'g Co.,

Manufacturers and Dealers in all kinds of

**RUBBER GOODS.**

WAREHOUSES:—**488, 490, & 492 Broadway, Cor. of Broome St., and 205 Broadway, Cor. of Fulton St., N. Y.**

GEO. M. ALLERTON, President.
J. D. VERMEULE, Vice-President.
R. G. ALLERTON, Treasurer.
B. M. HOTCHKISS, Secretary.

Factories, Naugatuck, Connecticut.

Address P. O. Box 1424, N. Y.

| | | | | |
|---|---|---|---|---|
| 8 doz. Copg. Sheets, 9 x 11 | | 1 50 | 12 00 | |
| 2 " " " 10 x 12 | | 1 75 | 3 50 | |
| | | | 15 50 | |
| | | 25 | 3 87 | |
| | | | 11 63 | |
| 9707 | | 10 | 1 16 | 10 47 |

122 **Complainant's Exhibit No. 8.**

February 20, 1883. J. A. S., *Examiner.*

R. C. CO. NEW YORK, Oct. 29, 1881.

*BOUGHT OF* GOODYEAR'S RUBBER M'F'G CO.

AND

Goodyear's India Rubber Glove M'f'g Co.

WAREHOUSES:

**488, 490, and 492 BROADWAY, Cor. BROOME ST.;**

**205 BROADWAY, Cor. FULTON ST.,**

NEW YORK CITY.

P. O. Box 1424. FACTORIES, NAUGATUCK, CONN. Established 1844.

| | | | |
|---|---|---|---|
| 1 doz. Jap'd Fold'g Pails | | 24 00 | |
| | 25 | 6 00 | |
| | | 18 00 | |
| | 10 | 1 80 | 16 20 |

6967 Net 30 ds.

GOODYEAR RUBBER CO.

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123 COMPLAINANT'S EXHIBIT No. 9. Feb. 20, 1883. J. A. S., Examiner.

Established 1844.

Geo. M. Allerton, president; J. D. Vermeule, vice-president; R. G. Allerton, treasurer; Rob't S. Walker, secretary.

Goodyear's India Rubber Glove M'f'g Co., manufacturers and dealers in all kinds of rubber goods; warehouse, 205 Broadway and 162, 164, & 166 Fulton street, New York; factories, Naugatuck, Connecticut.

Address P. O. box 1424.

205 BROADWAY, N. Y., *Nov.* 1*st*, 1875.

DEAR SIR: We desire to call your particular attention to the fact that our company is the original and oldest-established Goodyear's Company in the country, having been in operation since 1844, making it the pioneer company in the rubber manufacturing business.

As some confusion has recently arisen, caused by a concern lately started, styling itself "Goodyear Rubber Company," we take this occasion to inform you that we have no connection with any other establishment, and to prevent mistakes in future we would refer you to the enclosed card and envelope, on which you will observe our name in full, together with the street, number, and post-office box.

We should be pleased to receive your orders, and promise
124 that they shall be filled in the most satisfactory manner as to quality and prices. If you should favor us with an order, please make use of the enclosed envelope, ready stamped.

In conclusion, we would say that we manufacture and deal in all descriptions of rubber goods, and are enabled to sell at the lowest possible market rates.

Hoping soon to be favored with an order from you,

We are, very respectfully,

GOODYEAR'S I. R. GLOVE M'F'G CO.,
205 *Broadway and* 162, 164, *&* 166 *Fulton St., New York.*

Post-office box 1424.

COMPLAINANT'S EXHIBIT No. 10. Feb. 20th, 1883. J. A. S., Examiner.

Whereas on the first day of November, one thousand eight hundred and seventy, letters patent of the United States were granted to the Goodyear India Rubber Glove Manufacturing Company (a corporation organized under the laws of the Sate of Connecticut), as assignees of Burritt M. Hotchkiss, for a certain new and useful improvement in "dress shields," which said letters patent are numbered 108,908;

And whereas said company now are and ever since the date thereof have been the owners of said letters patent;

And whereas the Rubber Clothing Company and the Goodyear Rubber Company, corporations organized under the laws of the State of New York, are desirous of dealing in goods made thereunder:

125 Now, therefore, in consideration of the premises, and of good and valuable considerations to each of the said parties from the other paid and moving, it is mutually covenanted and agreed by and between the said Goodyear India Rubber Glove Manufacturing Company, party of the first part, and the said Rubber Clothing Company and Goodyear Rubber Company, party of the second part, as follows:

I. The said party of the first part hereby agrees to sell to the said party of the second part, for use and sale by themselves and their branch houses now or hereafter to be established, such improved "dress shields," made under and in accordance with the said letters patent, as the said party of the second part may order from time to time during the continuance of this agreement, at a discount of fifteen and four-tenths (15.4) per cent. off from the regular net terms to the trade (such regular terms to the trade purchasing of them being at present a discount of thirty-one and four hundred and seventy-four thousandths (31.474) from the regular list prices), but such net terms to the trade being alterable at pleasure by the party of the first part.

II. Said party of the first part further agrees to receive the notes of the said party of the second part for the several amounts of the said goods purchased of the party of the first part, payable in four months from the date of the several purchases.

III. Said parties of the second part, for themselves and their successors, hereby agree that they will not contest the validity of said letters patent or advise or assist others to contest the same, either at law or in equity, and that they will not make, order, sell, or deal in any improved "dress shields" like or substantially like those described in said letters patent, except in those ordered and pur-

126 chased of the said party of the first part, as aforesaid, and except to sell the lot now on hand, which the said party of the second part shall have the right to sell.

IV. The said party of the second part hereby order of the party of the first part one thousand gross of said shields, and agree to make payments for the same as aforesaid; and said party of the first part agree to fill said order and such further orders which may be given from time to time by the party of the second part.

V. The said parties hereto hereby agree to maintain strictly uniform prices for said "dress shields" to the trade, and not to sell the same in any way whatever or by means of any discounts, exchanges, or other devices below the prices which may be fixed therefor from time to time by the party of the first part as regular terms to the trade.

VI. The said party of the first part hereby reserves the right of supplying their present agents, viz., The American Rubber Com-

pany, at Boston; Richard Levick, Son & Company, of Philadelphia; W. G. Maxwell, of Baltimore; Bart & Hickcox, of Cincinnati; Halleck, Holmes & Company, of Chicago; Weaver, Taylor & Company, of San Francisco, and their successors, or a substitute for any of such agents in the same places, with said improved dress shields on the same terms at which they are at present supplied, any clause herein to the contrary notwithstanding; but the number of agents shall not be increased.

VII. This agreement shall continue in force during the full term of said letters patent and of all renewals and reissues thereof.

VIII. In the event of any legal proceedings being brought against the party of the second part for alleged infringement of any patent rights, which infringement shall be alleged to consist in the
127 sale by the parties of the second part of the goods covered by this agreement, the party of the second part shall notify in writing the party of the first part thereof, and the party of the first part shall either defend said suits or proceedings at their own expense or release the party of the second part from the obligations of this agreement.

And if at any time the party of the second part shall be enjoined from dealing in the goods which by this agreement are to be purchased from the party of the first part this agreement shall be suspended during the existence of such injunction.

IX. And it is further agreed that in case the said letters patent shall be adjudged by any court invalid or the said improvement not to be a new or useful invention, then and in that case either party may, by a notice in writing, annul this agreement.

In witness whereof the said parties to these presents have hereunto severally caused their respective corporate seals to be fixed and these presents to be signed by their respective proper officers this seventh day of September, one thousand eight hundred and seventy-five.

GOODYEAR'S INDIA RUBBER
GLOVE M'F'G CO.,
By JOHN D. VERMEULE, *Vice-President.*
RUBBER CLOTHING CO.,
By F. M. SHEPARD, *Pres't.*
GOODYEAR RUBBER CO.,
By F. M. SHEPARD, *Pres't.*

Signed and delivered in presence of—
GEO. O. SIMMONS.
CHAS. B. COE.

128 COMPLAINANT'S EXHIBIT No. 11. February 20th, 1883.
J. A. S., Examiner.

Know all men by these presents that we, the Goodyear India Rubber Glove Manufacturing Company, a corporation organized under the laws of the State of Connecticut, for and in consideration of the sum of one dollar and other good and sufficient consideration to us paid by

the Rubber Clothing Company and the Goodyear Rubber Company, corporations organized under the laws of the State of New York, do hereby release and forever discharge the said Rubber Clothing Company and the said Goodyear Rubber Company and their branch houses of and from all actions, causes of actions, suits, controversies, claims, and demands whatsoever for and by reason of the use or sale by them or either of them of dress shields heretofore used or sold by them or either of them.

In witness whereof the said Goodyear India Rubber Glove Manufacturing Company have hereunto caused their corporate seal to be hereto affixed and these presents to be executed by its proper officer this seventh day of September, in the year one thousand eight hundred and seventy-five.

GOODYEAR INDIA RUBBER GLOVE M'F'G COMPANY,
By JOHN D. VERMEULE, *Vice-President.*

Signed and delivered in presence of—
GEORGE O. SIMMONS.
CHAS. B. COE.

129 COMPLAINANT'S EXHIBIT No. 12. February 20, 1883. J. A. S., Examiner.

For delivery to Goodyear Rubber Clothing Co.

| | | |
|---|---|---|
| Goodyear Rubber Clothing Co. | Cor. Broadway and Broome St. | |
| Goodyear Rubber Co. | 362 | Broadway. |
| Goodyear Clothing Co. | 341 | |
| | 365 | |
| | 367 | |
| | 487 | |
| Rubber Clothing Co. & Goodyear Rubber Co. | 114 William St. | |
| | 57 Maiden Lane. | |

Also all correspondence to any rubber or Goodyear Co. when directed to any of the addresses above except Broadway and Broome St.

For delivery to Goodyear's India Rubber Glove Man'f'g Co.

| | | |
|---|---|---|
| Goodyear Rubber Manufacturing Co. | Cor. Broadway and Broome St. | |
| Goodyear India Rubber Glove Man'f'g Co. | 205 | Broadway. |
| Goodyear Manufacturing Co. | 488 | |
| Goodyear Glove Co. | 490 | |
| | 492 | |
| | 503 | |
| | 505 | |

Also all correspondence to any rubber or Goodyear Co. when directed to any of the addresses above except corner Broadway and Broome St.

130 COMPLAINANT'S EXHIBIT No. 13. Feb. 20, 1883. J. A. S., Examiner.

POST OFFICE, NEW YORK CITY, N. Y.,
FOURTH DIVISION,
CITY DELIVERY DEPARTMENT, *Jan'y 16th*, 1882.

Goodyear Rubber Co., P. O. box 3505, city.

GENTLEMEN: The frequency with which letters intended for your company and for the Goodyear's Rubber Manufacturing Company arrive at this office for delivery bearing imperfect addresses has heretofore led to the receipt by you of letters intended for them, and *vice versa*. It is not in the power of the post office to prevent such occurrences, the responsibility for which rests entirely with the writers of the letters, but after careful consideration it has been decided that delivery of the correspondence of both companies shall be made according to the inclosed schedule, which has been prepared in accordance with the regulations of the Post Office Department with regard to the delivery of mail matter.

It is quite probable that, notwithstanding the adoption of this system, the contents of some letters will show that they were not intended for the company receiving them; but should such be the case I trust it will be understood that if they have been delivered in accordance with the above rule the post office cannot be responsible for the errors in address which led to their reaching a destination for which they were not intended.

Very respectfully, H. G. PEARSON, *Postmaster*.

**Complainant's Exhibit No. 14.**

Feb. 20, 1883. J. A. S., *Examiner.*

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ESTABLISHED 1844.

GOODYEAR'S
INDIA RUBBER GLOVE M'F'G COMPANY,
488, 490, and 492 BROADWAY, cor. of Broome St., and
205 BROADWAY, cor. of Fulton St., NEW YORK.

GEO. M. ALLERTON, President. R. G. ALLERTON, Treasurer.
J. D. VERMILYE, Vice-President. B. M. HOTCHKISS, Secretary.
Factories:
NAUGATUCK, CONN.

P. O. BOX 1424.

MEMORANDUM.

FROM
GOODYEAR'S I. R. GLOVE M'F'G CO.,
488, 490, & 492 BROADWAY,
Corner of Broome Street,
NEW YORK, Aug. 24, 1880.

*To* F. M. SHEPARD, Esq.,
*Pres't R. C. Co.*

DR. SIR:

Enclosed find Check rec'd by us this morning. We communicated with some one at your place about it, and was informed that they would look it up. In about 15 minutes some one requested us to *keep the c'k, send it to the Post Office*, or *return it to Jacobs & Hughes*, without giving us the slightest intimation that the remittance belonged to you.

Yours truly,

GOODYEAR'S I. R. GLOVE M'F'G CO.,
By VAN VLIET.

GOODYEAR RUBBER CO.

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132 COMPLAINANT'S EXHIBIT No. 15.

Feb. 20, 1883.

J. A. S., *Examiner.*

If not called for in ten days return to
HAYDOCK BROS.,
WHOLESALE
CARRIAGE MANUFACTURERS,
N. W. Cor. Third & Chouteau Ave.,
ST. LOUIS, MO.

St. Louis, Mo.
Aug. 12, 2 p. m.

Cancelled stamp.

GOODYEAR RUBBER CO.,
New York,
N. Y.

Opened by mistake.
J. D. VERMEULE.

COMPLAINANT'S EXHIBIT No. 16.

Feb. 20, 1883.

J. A. S., *Examiner.*

[TELEGRAM.]

Jan. 5, 1880,
MONTGOMERY, ALA.

GOODYEAR RUBBER CO.,
N. Y.:

Express twenty-four pair each men's and women's overs. Pack in one case.

G. L. WERTH & CO.

Received Jan. 12, '81.
[Goodyear's I. R. Glove M'f'g Co., New York, Jan. 12, 1881.]
RUB. CLO. CO.
G. O. SIMMONS.

133 COMPLAINANT'S EXHIBIT No. 17. Feb. 20, 1883. J. A. S. Examiner.

Geo. M. Allerton, pres't. J. D. Vermeule, vice-pres't.

Established 1844.

Office of Goodyear's Rubber M'f'g Co. and Goodyear's India Rubber Glove Man'f'g Co.; warehouses, 488, 490, & 492 Broadway, cor. Broome St., and 205 Broadway, cor. Fulton St., N. Y.; factories, Naugatuck, Connecticut.

P. O. box 1424.

490 BROADWAY, N. Y., *January* 13, 1881.

J. A. Minott, Esq.. secretary.

DEAR SIR: We enclose letter herewith; it came in with our pile and the writer cut it open before noticing, but noticed it before opening it, so it is unnecessary for me to say the contents are unknown to me.

I regret I did not notice the address before cutting it, but I console myself when I feel it was purely accidental and feel certain you will credit me when I say so.

Yours very truly, J. D. VERMEULE,
*Vice-Pres't.*

134

Return to the Lambertville Manufacturing Co., Lambertville, Hunterdon county, N. J., if not delivered within 10 days.

Lambertville, N. J., Jan. 12.

Cancelled stamps.

Goodyear Rubber Co.,
P. O. Box 3845,
New York.

We wrote Postmaster James asking how this letter could have been put in box 1424, and this is his reply:

POST OFFICE, NEW YORK CITY, N. Y.,
FOURTH DIVISION,
CITY DELIVERY DEPARTMENT, *Feb.* —, 1881.

Respectfully returned to Goodyear Rubber Co., with apology for the error, which occurred through inexcusable carelessness of a clerk. He has been subjected to a penalty which, it is hoped, will prevent a repetition of the offense.

T. L. JAMES, *P. M.*
G.

135 COMPLAINANT'S EXHIBIT No. 18. February 20, 1883. J. A. S. Examiner.

To the public:

We beg to notify our patrons that, being the oldest-established Goodyear's Rubber Man'f'g Co. under the "Goodyear's patents,"

and having established an enviable reputation for our productions, there have been many rubber jobbing and retailing houses started under names quite similar to ours, and we have to caution any one wishing to communicate with us to be particular and address Goodyear's Rubber Manufacturing Company or Goodyear's India Rubber Glove Manufacturing Company, 488, 490, 492 Broadway, New York city.

136 COMPLAINANT'S EXHIBIT No. 19. February 20, 1883. J. A. S., Examiner.

*Special Notice.*

Our company was organized in 1844, and is now the oldest manufacturing company in the business. We have no connection whatever with a concern lately started styled "Goodyear Rubber Co." We have no branch stores anywhere, and our only office in New York is at our warehouse, No. 205 Broadway, and 162, 164, & 166 Fulton street. To avoid mistakes in future please address us in full as below:

Goodyear's I. R. Glove M'f'g Co.,
205 Broadway,
Box 1424. New York.

137 COMPLAINANT'S EXHIBIT No. 20. February 20, 1883. J. A. S., Examiner.

Geo. M. Allerton, pres't. J. D. Vermeule, vice-pres't.

Established 1844.

Office of Goodyear's Rubber M'f'g Co. and Goodyear's India Rubber Glove Man'f'g Co.; warehouses, 488, 490, & 492 Broadway, cor. Broome St., and 205 Broadway, cor. Fulton St., N. Y.; factories, Naugatuck, Connecticut.

P. O. box 1424.

Beware of imitators. Be particular and address 488, 490, 492 Broadway, N. Y.

490 BROADWAY, N. Y., *June* 4, 1880.

Messrs. T. H. Hinchman & Sons, Detroit.

DEAR SIRS: We return herewith your check for $133.56, received this morning, and cannot find any account against you corresponding, and presume you have sent it to us by mistake.

Yours truly, GOODYEAR'S I. R. G. M'F'G CO.
VAN.

138 COMPLAINANT'S EXHIBIT No. 21. Feb. 20, 1883. J. A. S., Examiner.

To the public:

We beg to notify our patrons that, being the oldest-established Goodyear's Rubber Man'f'g Co. under the "Goodyear's patents" and having established an enviable reputation for our productions, there have been many rubber jobbing and retailing houses started under names quite similar to ours, and we have to caution any one wishing to communicate with us to be particular and address Goodyear's Rubber Manufacturing Company or Goodyear's India Rubber Glove Manufacturing Company, 488, 490, 492 Broadway, New York city.

COMPLAINANT'S EXHIBIT No. 22. Feb. 20, 1883. J. A. S., Examiner.

To the Committee on Incorporations, Connecticut Legislature.

SIRS: Our attorney has informed us that Mr. Allerton, president of the Goodyear's India Rubber Glove Manufacturing Company, made some statements touching our corporate name, as well
139 as their own, and touching the manner in which our business is conducted, imputing unfairness to us in some respects, and of other general character, which, in justice to us as well as themselves, we feel bound to call your attention to in the form of an affidavit.

We feel we should be bound to be personally present and make these statement but for the fact that our attorney has informed us that further hearing will not be granted, owing to the great pressure of business with which your committee is burthened and the near approach of the adjournment of your legislative session.

First. We are told that Mr. Allerton, the president, complained of the fact that our warehouse in New York city had been changed to corner of Broome street and Broadway, and that under the guise of same name by which they had formerly chosen to do business, and in view of the fact that they had formerly occupied a store on the opposite corner of Broome street, that confusion would result, and we, by design or accident, might reap some undue advantage from this change. We are at a loss to understand why they should take our corporate name, even although these facts were true; but, to show the fairness of this criticism and the absolute precaution we have taken to deal justly with our neighbors, we desire to call your attention to the fact that our bills and advertisements are all made in the following form:

140

ENAMELED GOODS DEPARTMENT,
341 Broadway, bet. Worth & Leonard Streets,

NEW YORK, ..... 188 .

M .....

Offices of
THE GOODYEAR RUBBER CO.

341 Broadway, New York.
240 Main Street, Buffalo.
105 & 107 Madison Street, Chicago.
370 East Water Street, Milwaukee.
400 North 4th Street, St. Louis.
577 & 579 Market St., San Francisco.

F. M. SHEPARD, President.
J. A. MINOTT, Secretary.

Bought of GOODYEAR RUBBER CO.

Rubber Goods.
ENAMELED DRILL AND DUCK.
Enameled Carriage Aprons and Horse Covers.
Prop Blocks, Whip sockets, Shaft Rattlers, Wagon Springs, etc.

Oil Goods,
Enameled Oil-Cloths,
Muslins, Drills, and Ducks, etc.,
of all widths, in Blacks and Colors.
TABLE OIL-CLOTHS,
in Woods, Marbles, Prints and Patterns.

And all other Articles in these lines for the Carriage, Saddlery, Hardware, Upholstery and House Furnishing Trades.

Will Remove
Feb. 1st, 1882, to
487 BROADWAY,
Cor. of Broome St.

Cases.
Bundles.
Bales. } Forwarded by

This has been our form of Bill-Head for nearly eight years.

141 We desire to say in our own vindication that had the same scruples been entertained by others toward us there could be but little ground for complaint.

Secondly. We are told Mr. Allerton swore before your committee that the Goodyear's Rubber Manufacturing Company, the title they now desire to take, was a corporation doing business in the city of New York and conducting a manufacturing establishment there, and that this was the corporate name under which they had been doing business since March, 1873.

Thirdly. The facts are these: Our Goodyear Rubber Company was organized January, 1873. In March, after we had been doing business and become extensively known to the trade under our corporate names, they took the name of the Goodyear's Manufacturing Company, but under that name they have never conducted business until about the 1st of January, 1882, when they hired a room in the city with a view of making gossamer garments, an entirely new feature of their business and not connected with any invention of Goodyear, the work they do here being simply on sewing-machines in putting together garments, the cloth for which is manufactured by the Glove Company. To say this business is conducted by the Goodyear's Rubber M'f'g Co., a corporation in New York, is not believed by this deponent or the trade.

Fourthly. As to Mr. Allerton's claim that this, the Goodyear Rubber Company, is known under the name of the "Clothing Company," the "Union Rubber Company," and the "Union Tubing Company," or that they are all identical and the same corporation, is untrue in fact.

142 These several companies are all separate corporations, conducting separate and entirely distinct branches of business, having distinct corporate capital, corporators, and officers, and it can serve no honest purpose to represent them otherwise.

Fifthly. Now, as to the charge of piracy of name: In 1873 a notice, of which the following is a copy, was placed in the hands of every dealer in rubber goods in the United States, besides being generally circulated:

*Special Notice.*

Our company was organized in 1844, and is now the oldest manufacturing company in the business. We have no connection whatever with a concern lately started styled "Goodyear Rubber Co." We have no branch stores anywhere, and our only office in New York is at our warehouse, No. 205 Broadway, and 162, 164, and 166 Fulton street. To avoid mistakes in future please address us in full as below:

Goodyear's I. R. Glove M'f'g Co.,
205 Broadway,
Box 1424. New York.

140

ENAMELED GOODS DEPARTMENT,
341 Broadway, bet. Worth & Leonard Streets,

NEW YORK, ..... 188 .

M .....

Offices of
THE GOODYEAR RUBBER CO.

341 Broadway, New York.
240 Main Street, Buffalo.
105 & 107 Madison Street, Chicago.
370 East Water Street, Milwaukee.
400 North 4th Street, St. Louis.
577 & 579 Market St., San Francisco.

F. M. SHEPARD, President.
J. A. MINOTT, Secretary.

Bought of GOODYEAR RUBBER CO.

Rubber Goods.
ENAMELED DRILL AND DUCK.
Enameled Carriage Aprons and Horse Covers.
Prop Blocks, Whip sockets, Shaft Rattlers, Wagon Springs, etc.

Oil Goods,
Enameled Oil-Cloths,
Muslins, Drills, and Ducks, etc.,
of all widths, in Blacks and Colors.
TABLE OIL-CLOTHS,
in Woods, Marbles, Prints and Patterns.

And all other Articles in these lines for the Carriage, Saddlery, Hardware, Upholstery and House Furnishing Trades.

Will Remove
Feb. 1st, 1882, to
487 BROADWAY,
Cor. of Broome St.

Cases.
Bundles.
Bales. } Forwarded by

This has been our form of Bill-Head for nearly eight years.

141 We desire to say in our own vindication that had the same scruples been entertained by others toward us there could be but little ground for complaint.

Secondly. We are told Mr. Allerton swore before your committee that the Goodyear's Rubber Manufacturing Company, the title they now desire to take, was a corporation doing business in the city of New York and conducting a manufacturing establishment there, and that this was the corporate name under which they had been doing business since March, 1873.

Thirdly. The facts are these: Our Goodyear Rubber Company was organized January, 1873. In March, after we had been doing business and become extensively known to the trade under our corporate names, they took the name of the Goodyear's Manufacturing Company, but under that name they have never conducted business until about the 1st of January, 1882, when they hired a room in the city with a view of making gossamer garments, an entirely new feature of their business and not connected with any invention of Goodyear, the work they do here being simply on sewing-machines in putting together garments, the cloth for which is manufactured by the Glove Company. To say this business is conducted by the Goodyear's Rubber M'f'g Co., a corporation in New York, is not believed by this deponent or the trade.

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142 These several companies are all separate corporations, conducting separate and entirely distinct branches of business, having distinct corporate capital, corporators, and officers, and it can serve no honest purpose to represent them otherwise.

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Goodyear's I. R. Glove M'f'g Co.,
205 Broadway,
Box 1424. New York.

In 1875 the following circular was sent to all our customers:

To the public:

We beg to notify our patrons that, being the oldest-established Goodyear's Rubber Manuf'g Co. under the "Goodyear's patents" and having established an enviable reputation for our productions, there have been many rubber jobbing and retailing houses
143 started under names quite similar to ours, and we have to caution any one wishing to communicate with us to be particular and address Goodyear's Rubber Manufacturing Company or Goodyear's India Rubber Glove Manufacturing Company, 488, 490, 492 Broadway, New York city.

Notwithstanding these attacks upon our business and reputation we have never replied by counter-circulars or counter-attacks, and we deem it only necessary now to reply, in view of the fact that this investigation has assumed somewhat of a judicial character, and we cannot allow it to be made longer before responsible parties without reply.

That the name of our corporation has not been assumed covertly or for any sinister purpose, or with a view to wrong other parties, the Trade Journals, which we have every year issued since 1874 and sent to every dealer in the country, and particularly to the Goodyear's India Rubber Glove M'f'g Co., with whom we have important contracts under our respective corporate names, will abundantly show.

We append samples of these Trade Journals to show their character and significance.

Respectfully yours,

GOODYEAR RUBBER COMPANY,
F. M. SHEPARD, *President.*

Trade Journals:

No. 25, Balt., 1876.
141, Chicago, 1874.
33, Wm. St., 1879.

Sworn to before—

JOHN M. HARRINGTON, *Notary.*

144 COMPLAINANT'S EXHIBIT NOTICE TO PRODUCE ORIGINALS OF ENVELOPES, &c. April 9, 1883. J. A. S., Examiner.

United States Circuit Court, Southern District of New York.

GOODYEAR RUBBER CO.
*vs.*
GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY.

GENTLEMEN: Please take notice that you are hereby required to produce at the next hearing in the above-entitled cause, before John A. Shields, Esq., special examiner, to be held at No. 59 Wall street, New York, on the 22nd day of March, 1883, the originals of the

envelopes, postal cards, and letters described below, and that in default thereof we shall introduce secondary evidence of their contents.

An envelope labeled "Return to George H. Freeman, Abilene, Kansas, * * * " postmarked "Abilene, Kansas, July 13, 1882," and addressed "Mr. Andrew C. Frary, care The Goodyear Rubber Co., New York, N. Y."

A postal card postmarked "New York, July 17," addressed "Mr. Brady, Broadway, cor. Broome St., city, with Goodyear Rubber Co.," and dated July 15, '82.

145 An envelope postmarked "Albany, N. Y., July 17" (1882), and addressed "Mr. Wm. E. Knickerbocker, Goodyear Rubber Co., Broadway, north of Broome St., N. Y. city."

A postal card postmarked "Greenwich, Ct., July 22" (1882), and addressed "Mr. Clinton Vanfleet, Goodyear Rubber Co., Broadway and Broome St., New York city."

An envelope labeled as from F. A. Sinclair, postmarked "Mottville, N. Y., July 28, 1882," and addressed "Goodyear Rubber M'f'g Co., 487 Broadway, New York."

An envelope labeled as from H. C. Davidson, postmarked "Montgomery, Ala., July 26" (1882), and addressed "I. R. Glove Co., cor. Broadway and Broome St., New York."

An envelope labeled as from Stephen Ballard & Co., postmarked "New York, Aug. 3" (1882), and addressed "Mr. Van Vleit, care Rubber Clothing Co., B'way, above Broome St., city."

An envelope postmarked Bethlehem, N. H., Aug. —, 1882, and addressed "Mr. Wm. E. Knickerbocker, Goodyear Rubber Co., Broadway, above Broome, N. Y. city."

An envelope postmarked Bethlehem, N. H., Aug. 5, 1882, and addressed Mr. L. A. Pitcher, Goodyear Rubber Co., Broadway, above Broome, N. Y. city.

A postal card postmarked Greenwich, Ct., Aug. 8, 1882, and addressed Mr. Clinton Vanfleet, Goodyear Rubber Co., Broadway and Broome St., New York city.

An envelope postmarked New York, Aug. 21, 1882, and addressed A. C. Frary, Esq., care Goodyear Rubber Co., Broadway, N. Y. city.

An envelope labeled as from Hamilton Schenck & Co., postmarked New York, Aug. 21, '82, and addressed Fred. Stephenson, Esq., Goodyear Rubber Co., Broadway, near Central Hotel, New York.

146 An envelope postmarked New York, Aug. 21, 1882, and addressed Mr. Henry Singate, 108 Woster St., in care of Goodyear's Rubber Co., New York city.

An envelope labeled as from John Wanamaker, postmarked Philadelphia, Sep. 1, 1880, and addressed "The Goodyear Rubber Co., 504 Broadway, New York."

An envelope postmarked Stamford, Ct., Sep. 4, 1882, addressed M. F. Stephenson, care Goodyear & Co., Broadway and Broome St., New York, N. Y.

A postal card postmarked Fort Worth, Texas, Sep. 1, 1882, and addressed Goodyear Rubber Co., New York city, 503 Broadway.

An envelope postmarked New York, Sep. 15, 1882, and addressed

Mr. John Church, Goodyear Rubber Co., N. Y., B'way, near Broome St.

An envelope labeled as from the Anawanda Club, postmarked New York, Sep. 16, 1882, and addressed A. P. Leacraft, care Goodyear Rubber Co., B'way and Fulton St., city.

An envelope postmarked Newport, R. I., Sep. 18, 1882, and addressed Mr. C. Van Vliet, Goodyear Rubber Co., Broadway, between Spring and Broome Sts., New York city, New York.

A postal card from John Wanamaker, Phila., dated 9, 18, '82, addressed the Goodyear Rubber Co., Broadway, New York city, bet. Spring and Broome.

An envelope postmarked Albany, Sep. 22, 1882, and addressed A. C. Leaycraft, Esq., care Goodyear Rubber Co., N. Y. city, Broome St. store.

An envelope labeled as from F. Milton Smith, postmarked New York, Sep. 26, 1882, addressed Edward W. Clements, Esq. (with Goodyear Rubber Co.), Broadway and Broome St., city.

An envelope labeled as from J. M. Longnecker, postmarked Delta, O., Sep. 27, 1882, addressed Knickerbocker, care Goodyear Rubber Co., New York city, N. Y.

147 A letter dated Oct. 4, 1882, from the First National Bank, Indianapolis, Ind., which contained a draft drawn by the Goodyear's India Rubber Glove M'f'g Co. on P. Gramling for $93.99.

An envelope postmarked New York, Oct. 6, 1882, addressed Mr. Fred. Stephenson, Goodyear Rubber Co., Broadway, near Grand Cent. Hotel, New York city.

A postal card from Roll, Thayer & Williams, postmarked Kansas City, Oct. 10, 1882, and addressed Goodyear Rubber Co., 543 Broadway, New York.

An envelope postmarked New York, Oct. 11, '82, and addressed Mr. Fred. Stevenson, care Goodyear Rubber Co., 487 Broadway, city.

A postal card from Summers & Walker, postmarked Monroeton, Pa., Oct. 14th, 1882, and addressed Goodyear Rubber Co., 503 Broadway, N. Y.

An envelope labeled as from the Simmonds Hardware Company and postmarked St. Louis, Mo., Oct. 13, 1882, and the letter therein contained, the same being an order for six pairs of drab fishing stockings, and being addressed inside to the Goodyear Rubber M'f'g Co., New York.

An envelope postmarked New York, Oct. 16, 1882, addressed to Mr. Fred. Stephenson, Goodyear Rubber Co., Broadway, Grand Hotel square, New York, N. Y.

An envelope postmarked Philadelphia, Pa., Oct. 19, 1883, addressed Mr. E. W. Clements, care Goodyear Rubber Co, cor. Broadway and Broome, New York.

A postal card postmarked New York, Oct. 30, 1882, addressed Mess. Goodyear Rubber Co., Broadway, opposite St. Nicholas Hotel, New York city.

An envelope postmarked St. Louis, Mo., Oct. 25, 1882, addressed

F. R. Vermule, Esq., care Goodyear Rubber Co., Broadway, New York, N. Y.

148 An envelope labeled as from the American Rubber Co., 59 and 61 Franklin St., Boston, Mass., postmarked Boston, Mass., Nov. 6, 1882, addressed J. D. Vermule, Esq., 487 Broadway, New York.

A postal card postmarked New York, Nov. 4, 1882, addressed Goodyear Rubber Co., B'way, near Broome St., N. Y.

An envelope postmarked New York, Nov. 8, 1882, addressed Mr. Henry R. Hovey, Goodyear's, corner Broadway and Broome, city.

An envelope postmarked New York, Nov. 13, 1882, labeled as from Frank & Du Bois, fire, marine, and railroad insurance, 45 and 47 William St., New York, addressed J. D. Vermule, Esq., Goodyear Rubber Co., Fulton and Broadway, N. Y.

An envelope labeled as from First National Bank of Indianapolis, postmarked Indianapolis, Ind., Nov. 15, 1882, addressed Goodyear's Rubber Co., NewYork, N. Y., and the letter covered by said envelope which contained a draft on Fred. Barnard, Indianapolis, for $712.53.

An envelope labeled as from Lake Bros., postmarked Grenada, Miss., Nov. 14, 1882, and addressed Goodyear Rubber Co., New York, N. Y., and the letter covered by said envelope, which enclosed a draft, No. 18749, on Lake & Austin, Grenada, Miss., for $301.61.

An envelope labeled as from Bainburger, Bloom & Co., postmarked Louisville, Ky., Dec. 14, 1882, addressed Goodyear Rubber Co., New York, N. Y., 448 B'way, and the letter therein contained advising the return of two rubber coats.

An envelope labeled as from Green's bank, and postmarked Jackson, Miss., Dec. 20, 1882, addressed Mess. Goodyear's India Rubber Co., New York, N. Y., and the letter covered by said envelope which returned unpaid a draft on Stevens & Saunders for $18.

149 An envelope labeled as from the First National Bank of Indianapolis, addressed Goodyear Rubber Co., New York, N. Y., and the letter covered thereby, dated on or about the 24th of December, 1882, and which contained a draft on Louis Dessar, Indianapolis, for $69.11.

Yours, etc.,

MACFARLAND, REYNOLDS & LOWREY,
*Solicitors for Complainant.*

To Messrs. Betts, Atterbury & Betts, solicitors for defendants.

Due service of a copy of the within notice is hereby admitted. Dated New York, 19th March, 1883.

BETTS, ATTERBURY & BETTS,
*Solicitors for Defendants.*

COMPLAINANT'S EXHIBIT No. 25.

April 9th, 1883.

J. A. S., *Examiner.*

Goodyear's I. R. Glove M'f'g Co., 488, 490, and 492 Broadway, cor. Broome St., and 205 Broadway, cor. Fulton St., New York.

Address P. O. box 1424.

NEW YORK, *Jan'y* 26, 1882.

Received from Messrs. Rubber Clo. Co. nine hundred and five and $\frac{54}{100}$ dollars for Dec. acc.

$905.54.

GOODYEAR'S RUBBER M'F'G CO.,
Per C. C'K.

Have removed to 503 and 505 Broadway (St. Nicholas Hotel block).

150 The following receipts are from the receipt book marked

COMPLAINANT'S EXHIBIT No. 26. April 9, 1883. J. A. S., Examiner.

No. A. W. G. V.

New York, July 6, '68, received from Mr. W. G. Vermilye six $\frac{29}{100}$ dollars in full to 1st inst.

GOODYEAR GLOVE CO.
FOLSOM.

$6.29.

No. B. W. G. V.

Received, New York, Aug. 18, '68, of W. G. Vermilye seventeen and $\frac{6}{100}$ in full to 1st inst.

GOODYEAR'S GLOVE CO.
GREY.

$17.06.

No. C. W. G. V.

Received, New York, Nov. 11th, 1868, of W. G. Vermilye one hundred and thirty-eight and $\frac{13}{100}$ dollars in full for acc't to 1st inst.

GOODYEAR'S GLOVE CO.
GREY.

$138.13.

No. D. W. G. V.

Received, New York, Dec. 11th, 1868, of W. G. Vermilye sixty-two and $\frac{52}{100}$ dolls. in full to 1st inst.

GOODYEAR GLOVE CO.
Per GREY.

$62.50.

151 No. E. W. G. V.

Received, New York, March 6, 1869, from Mr. W. G. Vermilye two $\frac{49}{100}$ dollars in settlement February account.

GOODYEAR'S GLOVE CO.
WELLS.

No. F. W. G. V.

Received, New York, Apr. 12, 1869, from Mr. Wm. G. Vermilye two $\frac{80}{100}$ dollars in full for Mar. acc't.

GOODYEAR'S GLOVE CO.
$2.80. JAMES G. WELLS.

No. G. W. G. V.

Received, New York, May 15, '69, from Mr. W. G. Vermilye eight $\frac{93}{100}$ dollars in full to 1st inst.

GOODYEAR GLOVE CO.,
$8.93. Per A. P. L.

No. H. W. G. V.

Received, New York, July 17, 1869, from W. G. Vermilye check for seventy-five $\frac{37}{100}$ dollars in payment of June acc't.

GOODYEAR'S GLOVE CO.
$75.37. WELLS.

152 No. I. W. G. V.

Received, New York, Aug. 12, '69, from Mr. W. G. Vermilye twenty-three $\frac{25}{100}$ dollars in full to 1st inst.

GOODYEAR GLOVE CO.,
$23.25. P'r A. P. L.

No. J. W. G. V.

Received, New, York, Sept. 10, '69, from Mr. W. G. Vermilye twenty-five $\frac{93}{100}$ dollars in full to 1st inst.

GOODYEAR GLOVE CO.,
P'r A. P. L.

No. K. W. G. V.

Received, New York, Oct. 15, '69, from Messrs. W. G. Vermilye & Co. nineteen $\frac{20}{100}$ dollars in full to 1st inst.

GOODYEAR GLOVE CO.,
$19.20. P'r A. P. L.

No. L. W. G. V.

Received, New York, Feb. 21, '70, from Mr. W. G. Vermilye forty-one $\frac{18}{100}$ dollars in full to 1st inst.

GOODYEAR'S GLOVE CO.,
$41.18. R. G. ALLERTON, *Treas.*

153 No. M. W. G. V.

Received, New York, May 3, '70, from Mr. W. G. Vermilye ten $\frac{80}{100}$ dollars in full for acc't to 1st inst.

GOODYEAR GLOVE CO.,
$10.80. P'r A. P. L.

COMPLAINANT'S EXHIBIT No. 26. April 14, 1883. J. A. S., Examiner.

United States Circuit Court, Southern District of New York.

THE GOODYEAR RUBBER CO.

*vs.*

THE GOODYEAR INDIA RUBBER GLOVE MANUFACTURING CO. *et al.*

Take notice that you are required to produce at the next hearing herein, April 14th, 1883, the contents of a certain envelope postmarked "Birmingham, Conn., April 11," addressed "Goodyear Rubber Co., New York, N. Y.," viz., a bill from Goodyear's Rubber M'f'g Co. and Goodyear's India Rubber Glove M'f'g Co. to Derby Silver Co., dated March 5, 1883, for ½ doz. D. C. ice aprons, $11.25, and
154 a check dated April 11th, 1883, drawn by the Derby Silver Co., for $11.25, to the order of Goodyear Rubber Company.

In default of such production secondary evidence will be introduced as to the same.

Yours, &c.,

MACFARLAND, REYNOLDS & LOWREY,
*Sol'rs for Compl't.*

Dated April 13, 1883.

To Betts, Atterbury & Betts, sol'rs for defendants.

CITY AND COUNTY OF NEW YORK, *ss:*

Woodruff De Veau, being duly sworn, says that on the 13th day of April, 1883, he served the foregoing notice upon Betts, Atterbury & Betts, attorneys for Goodyear Rubber M'f'g Co., by leaving a copy of the same with the person in charge of the office of said attorneys, at number 120 Broadway, New York city, the said attorneys being then absent from their said office.

WOODRUFF DE VEAU.

Sworn to before me this 13th day of April, 1883.

RO. L. HARRISON,
*Notary Public, N. Y. Co.*

155 COMPLAINANT'S EXHIBIT No. 27. April 14, 1883. J. A. S., Examiner.

Return to THE DERBY SILVER CO., Birmingham, Conn., if not delivered within 10 days.

Birmingham, Conn., Apr. 11, 7 p. m.

Cancelled stamp.

Goodyear Rubber Co.,
New York,
N. Y.

April 12, 1883, we received this envelope. It contained a bill to Derby Silver Co., dated March 5, 1883, for half doz. D. C. ice aprons, amounting to $11.25, and a check, dated April 11, 1883, from the

Derby Silver Co., W. J. Miller, treasurer, for $11.25, drawn to the order of Goodyear's Rubber Co. (ch'k No. 5275). The bill was from the Goodyear's Rubber M'f'g Co. and Goodyear's India Rubber Glove M'f'g Co., 503 & 505 B'way, N. Y. city. We sent the bill and check to the G. I. R. Glove M'f'g Co.'s store, 503 B'way.

W. S. VERMILYE.

I delivered the above bill and check to the Goodyear's I. R. Glove M'f'g Co. (cashier's desk).

April 12, 1883.

H. H. SHEPARD.

156 UNITED STATES OF AMERICA, } ss:
*Southern District of New York,* }

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to one hundred and fifty-five, inclusive, contain a true and complete transcript of a part of the record and proceedings had in said court in the case of the Goodyear India Rubber Glove Manufacturing Company and the Goodyear Rubber Manufacturing Company, appellants, against the Goodyear Rubber Company, appellee, as the same remain of record and on file in said office, and which is by stipulation of counsel for the respective parties (said stipulation being hereunto annexed) to be certified by me to the Supreme Court of the United States as a part of the record on the ap-
157 peal, the same having been omitted by mistake from the original record certified to the said Court.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-first day of March, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the said United States the one hundred and twelfth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: Supreme Court U. S. 1887, October term. No. 309. The Goodyear India Rubber Glove Manufacturing Co. *et al.*, appellants, *vs.* The Goodyear Rubber Company. Stipulation of counsel and addition to record.

Stamped on cover: Office Supreme Court U. S. Filed Mar. 26, 1888. James H. McKenney, clerk.

Burgoyne Quick Printing Co., cor. Centre and Worth

# UNITED STATES SUPREME COURT.

THE GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY ET AL.,
Appellants,

vs.

THE GOODYEAR RUBBER COMPANY,
Respondents.

It is hereby stipulated and agreed by and between the solicitors for the respective parties herein, that the Complainant's Exhibit No. 46 may be printed by the appellants herein and transmitted to the Clerk of the United States Supreme Court; such exhibit so printed to have the same force and effect as if it had been printed by the Clerk of the United States Supreme Court in the regular manner. Said Complainant's Exhibit No. 46 having been omitted inadvertently from the record transmitted by the Clerk of the United States Circuit Court for the Southern District of New York to the Clerk of the United States Supreme Court.

Dated April 25th, 1888.

W. W. MCFARLAND,
Of Counsel for Respondents.

FREDERIC H. BETTS,
Of Counsel for Appellants.

**Complainants' Exhibit No. 46, Feby. 23d, 1884.**

THE GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY and JONATHAN MABBETT and EDWIN W. BULLINGER,

Plaintiffs,

AGAINST

DANIEL B. MOORE and GEORGE B. THOMPSON,

Defendants.

State of Missouri, County of St. Louis, ss.

In the Circuit Court of said St. Louis County.

October Term, 1867.

Plaintiffs state that on or about the 7th day of June, A. D. 1847, the said first-named plaintiff was formed and created a body politic and corporate under and in pursuance of the laws of the State of Connecticut, for the manufacturing and trading purposes hereinafter mentioned, and hath ever since continued to do business as such corporation, under its corporate name and style of the "Goodyear India Rubber Glove Manufacturing Company," to wit, in the States of Connecticut and New York, and elesewhere. That when said corporation was created, and for many years thereafter, one Charles Goodyear, of said State of Connecticut, had obtained, and himself and assigns continued to hold letters patent of the United States, originally granted to said Goodyear as inventor thereof in the year 1844, reissued in 1849 and extended in 1858, for certain new and useful improvements in the manufacture of india rubber goods and fabrics; that the india rubber goods manufactured under said patents were of much greater value than any other india rubber goods in the markets of the United States, and came into extensive use and

great demand; by means whereof the fame of said inventor, and of the goods manufactured by the processes so by him invented and patented, became widely extented throughout the United States and other contries.

That said corporation plaintiff was formed chiefly for the purpose of manufacturing and selling india rubber goods under the letters patent aforesaid; that to secure the benefit of the reputation enjoyed by said Goodyear, inventor and patentee as aforesaid, the said inventor not being himself engaged to any considerable extent in such manufacture, but himself as assigns disposing of rights under said letters patent to others, the said corporate name and style of "GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY" was adopted by said corporation plaintiff when created; that said corporation duly purchased from said Goodyear and assigns, owners of said patents, the license and privilege of manufacturing and selling india rubber goods thereunder and by the process aforesaid, and until the expiration of said extended patents, to wit, about the year 1865, did, and hath ever since continued to manufacture such goods and fabrics by the processes aforesaid, and to sell the same.

That by the energy of its agents; and by the superior quality of the goods aforesaid by it manufactured, and sold by the expenditure of large sums of money and much time and labor in advertising and otherwise making known to the public the quality of its said wares and products and the business of said corporation, to wit, under the said name and style of "Goodyear's India Rubber Glove Manufacturing Company," said corporation had built up, long before the grievances herein complained of, a large and profitable business in the City of New York, its principal place of business, and elsewhere, and had created an extensive demand for the goods so by it made and offered for sale, and was enjoying large and increasing profit therefrom, and was widely and favorably known by its corporate name

and style aforesaid, as the manufacturer and vendor of such goods.

Plaintiffs further state that about the month of February, A. D. 1866, said corporation plaintiff, desiring to extend its said business, established in the City of St. Louis, Missouri, a branch or agency for the sale throughout the Western, Northwestern and Southwestern States of its india rubber goods aforesaid; that in order to conduct the same to advantage, said corporation plaintiff, and said Mabbett and Bullinger, plaintiffs, entered into an agreement whereby said Mabbett and Bullinger undertook and agreed with said corporation plaintiff to carry on a general wholesale and retail trade in selling and dealing in india rubber goods and merchandise, or goods composed wholly or in part of india rubber, at said City of St. Louis; it being further agreed that all goods sold or dealt in by said Mabbett & Bullinger, at the store or place of business, to be used by them in said City for said purpose, should be furnished exclusively by said corporation, plaintiff to wit: India rubber goods manufactured or purchased by it for said store or agency; said Mabbett and said Bullinger, plaintiffs, agreeing to devote their whole time and energy to said business, in the profits whereof all said plaintiffs were to be and are interested, and of and concerning which said two last-named plaintiffs were to account as between said parties agreed.

Plaintiffs further state that about the month of March, A. D. 1866, said Mabbett and Bullinger in pursuance of said agreement procured a suitable store in said city and did commence and have ever since diligently carried on thereat a business such as agreed on as above stated, under the style and name of "Goodyear's India Rubber Glove Manufacturing Company.—Mabbett and Bullinger, Agents," to wit, at the place of business or store aforesaid, being the store now numbered and known as No. 417 North Fourth street (formerly No. 104 North Fourth street) on the west side

of said Fourth street, between Locust and St. Charles streets, in said City of St. Louis.

Plaintiffs further state that in establishing as well the said branch store or agency as in the original formation of said corporation, plaintiff, the said corporate name of "Goodyear's India Rubber Glove Manufacturing Company" was used, because of the said reputation acquired by said inventor and patentee, by whose processes and under whose patents so long as said patents existed, said corporation manufactured and sold said goods; which name moreover with the acquiescence of said patentee had now long been identified with said corporation and the manufactures and wares thereof, and with its business reputation and good will in New York and elsewhere; and plaintiffs state that for the express purpose of continuing such identification, and of distinguishing said corporation, plaintiff and its wares, and the said store No. 417 North Fourth street, established for the sale thereof, from all other dealers in india rubber goods, a sign of unusual color and apparance was by plaintiffs set up in front of and over said store No. 417 North Fourth street, in or about the month of March, A. D. 1886, and which has ever since remained bearing thereon said corporate name of "Goodyear's India Rubber Glove Manufacturing Com- "pany," the words "GOODYEAR" and "India Rubber" being in large and conspicuous letters.

Plaintiffs further state that the goods and merchandise hitherto sold at or now in said store were all furnished by said corporation plaintiff under its said agreement; that said Mabbett and Bullinger in pursuance of said agreement on their part for the conduct of said business, have expended more than three thousand dollars in widely advertising the said store and the business thereof among the people and tradesmen as well of said City of St. Louis, as in the States of Missouri, Nebraska, Kansas, Illinois, Iowa, Indiana, Kentucky—Tennessee, Arkansas, Mississippi, Louisiana,

Texas, and in New Mexico, Nebraska and Montana Territories, within eighteen months past; that by means of said labor and outlay, in connection with the quality of the goods manufactured for and furnished to said store No. 417 North Fourth street and there offered for sale as aforesaid, the name and reputation of said corporation plaintiff as a manufacturer of and dealer in said goods, and the business carried on at said store No. 417 North Fourth street, St. Louis, Missouri, under said name, have become widely and favorably known to great numbers of persons, tradesmen and others, in and throughout the States and Territories aforesaid, by reason whereof large quantities of said goods have been sold at and ordered from said store, to the profit of the said plaintiffs, but which profit plaintiffs believe and charge would have been greater still but for the wrongs and grievances on the part of said defendants hereinafter mentioned.

Plaintiffs further state that prior to the grievances hereinafter mentioned, and for more than twelve months after the said store No. 417 North Fourth street had been fully established and in successful operation, no other store or dealer in india rubber goods or fabrics in said City of St. Louis used or was known or distinguished by said name *Goodyear*, or by any name, or combination of words capable of being casually mistaken for or confounded with said corporate name of said plaintiff by which said store No. 417 North Fourth street was distinguished and known as aforesaid. And plaintiffs state that said store last mentioned and the business and management thereof had become well known and identified to persons purchasing, dealing in or requiring for their own use such goods as there offered for sale, not only by said full corporate name of said corporation plaintiffs, but also by convenient abbreviations thereof, such as "Goodyear's India Rubber Store," "Goodyear's India Rubber Co.," "Goodyear & Co.," insomuch that many

letters containing orders and remittances and otherwise relating to the business of said store, No. 417 North Fourth street, and intended for said plaintiffs having charge thereof, have been received by said plaintiffs from time to time and up to the present time, as well from old as new customers in said City of St. Louis and elsewhere, addressed to "*Goodyear Rubber Co.*," "*Goodyear Rubber Goods Co.*," "*Goodyear Manufacturing Co.*," "*Goodyear Glove Co.*," "*Goodyear & Co.*," "*Messrs. Goodyear*" and "*Mr. Goodyear*," respectively.

Plaintiffs further state that prior to the month of June, A. D. 1867, said defendant Moore was a member of the firm of Moore & Paul, doing business at the store No. 319 Fifth street, in said City of St. Louis, in a different business neighborhood from plaintiff's said store, 417 North Fourth street, dealing in india rubber goods not manufactured (as plaintiffs believe and state) by said Moore & Paul; and said defendant Thompson prior to said period was engaged in business, as plaintiffs are informed and believe, as a clerk, agent or salesman of some business house in New York City known as H. G. Norton & Co., also dealing in india rubber goods. But plaintiffs state that neither of said defendants nor said firm of Moore & Paul, nor said H. G. Norton & Co., then or at any time used or were in any manner known or distinguised in said business by said name of *Goodyear* or by any name resembling the corporate name of said corporation plaintiff, or liable to be mistaken for or confounded with said name then long previously adopted and used by plaintiffs as aforesaid and by which as above stated plaintiffs were already widely and favorably known.

That about the month of June, A. D. 1867, said firm of Moore & Paul ceased to carry on said business and dissolved, and shortly thereafter said defendants together opened a store in said City of St. Louis for the sale of india rubber goods, under the style of Moore &

Thompson, agents for "H. G. Norton & Co.," which new store is known and numbered as No. 309 North Fourth street, and is situated in the immediate neighborhood of plaintiff's said store, No. 417 North Fourth street, to wit, on the next block, on the same side of said Fourth street, between Locust and Olive streets, in said city, which location plaintiffs believe and charge was selected by said defendants with a view to the wrongs and injuries committed by defendants in that behalf and to facilitate the same.

And plaintiffs state that very soon thereafter, to wit, about the month of July, A. D. 1867, the precise day not known or remembered, said defendants, with the intent thereby, as plaintiffs believe and charge, wrongfully to interfere with the trade and good will of plaintiff's said store, No. 417 North Fourth street, and by mislea'ing and deceiving the public and the customers of said plaintiffs as hereinafter stated, wrongfully to draw away from plaintiffs a part or all of the custom and trade so acquired by them as above stated, did cause to be set up in front of their said store, No. 309 North Fourth street in said city, a large and conspicuous sign upon which are painted the words

"GOODYEAR'S INDIA RUBBER GOODS."

Plaintiffs further state that no such nor any similar sign was previously used by said Moore & Paul nor by either of said defendants, so far as plaintiffs know or believe, but that said sign does closely resemble as well in color as in words and name conspicuous thereon the said sign long previously put up and ever since displayed by plaintiffs at their said store, No. 417 North Fourth street.

And plaintiffs further state that said defendants, with the like wrongful and fraudulent intent as aforesaid, as plaintiffs believe and charge, did cause to be printed a large number of *bill heads* bearing

thereon conspicuously the words "*Goodyear's India Rubber Goods*," and have used and are using the same in their business ; and have also, as plaintiffs believe and charge in divers other manners since opening their said store, No. 309 North Fourth street, in said city, with the like wrongful and fraudulent intent to draw away trade and business from plaintiffs, and to mislead and deceive persons desiring or intending to purchase goods from plaintiffs, have fraudulently adopted and used in divers modes and combinations the said words "Goodyear" and "Goodyear's India Rubber Goods" in making known and transacting the business of them said defendants.

Plaintiffs aver that through and by reason of the said fraudulent devices, whereby as plaintiffs charge said defendants designed to procure business for themselves by using the name and words already identified with the store and business of said plaintiffs, divers persons, as well such who had previously dealt at plaintiffs' said store, No. 417 North Fourth street, as others acquainted with the reputation thereof and of the goods there kept for sale, desiring to purchase the goods so furnished and offered for sale by plaintiffs, have in fact been deceived and misled, to wit, by said use and display by defendants at their said store, No. 309 North Fourth street, of said name and words hitherto identified (by means of the cost and labor aforesaid) with plaintiff's said store, No. 417 North Fourth street, and when intending to visit said store, No. 417, and to purchase goods of plaintiffs thereat, have been induced by said signs set up by defendants at their said store, No. 309, on the next block, being a colorable and fraudulent imitation of plaintiffs' sign above mentioned, to enter by mistake said defendants' store, No. 309, and supposing the same to be the store of said plaintiffs, to buy goods of said defendants, which, as plaintiffs believe and charge, they would not otherwise have done.

Plaintiffs allege that by means of said fraudulent use

and imitation of said name and words and sign long previously adopted and used by plaintiffs and by which plaintiffs and the said store, No. 417 North Fourth street, had become well known and identified as aforesaid, the said defendants have wrongfully and fraudulently diverted trade and custom from plaintiffs and have committed a fraud upon the public within the jurisdiction and control of a court of equity; and that by reason of the nature of said injury to plaintiffs, and the continuing character thereof, it is impossible for plaintiffs fully to estimate the damage sustained by them, nor would an adequate remedy therefor be afforded by an action at law for damages, even were it possible, which plaintiffs say it is not, to ascertain and make proof of each instance of such injury.

Plaintiffs further state that immediately upon discovering said fraudulent imitation of plaintiffs' said sign, and use of the name and words aforesaid, to wit, in the month of July, A. D. 1867, plaintiffs requested said defendants to discontinue the same, and to abstain from further wrong or injury in that behalf; but that defendants, though acknowledging the interference and mistakes complained of, wholly refused to remove or alter said sign, or to abstain from said wrongful and fraudulent use of said name and words, and do in fact still continue and persist in the same, and in the frauds and injuries above mentioned, for which plaintiffs ask judgment for damages in the sum of five hundred dollars. And for that the further continuance of said frauds and wrongs complained of would inflict irreparable injury upon plaintiffs and no adequate remedy therefor would be afforded by an action for damages, plaintiffs further pray the Court by its writ of injunction in this behalf to restrain and prohibit said defendants, their servants and agents, from further using or displaying to the public the said sign now erected at said store, No. 309 North Fourth street, and from making use or causing to be made or displayed any color-

able imitation of said sign erected and used by plaintiffs as aforesaid at their store, No. 417 North Fourth street, and from using, whether by printing, writing, or painting, on any sign, bill-head, letter-sheet: note paper or in any advertisement or public notice, or in any other manner in or for the purposes of or in connection with the business of said defendants, the said name of *Goodyear*, or the words *Goodyear's India Rubber Goods*, or "*Goodyear's Rubber Goods*," or any other words or combination of words of device whatsoever, whereby any person may be misled or deceived or the said store or business establishment of said plaintiffs may be mistaken for that of said defendants, and for such other and further relief as to the Court shall seem meet and just in the premises.

LUCIEN EATON,
With whom is
HENRY HITCHCOCK,
Attorneys for Plaintiffs.

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EDWIN W. BULLINGER, one of said plaintiffs for all, being first duly sworn on his oath, says that he believes the foregoing petition and the matters therein as stated are true.

EDWIN W. BULLINGER,

Subscribed and sworn to before me this 5th day of September, 1867.

CHAS. H. LEAVY,
[SEAL.] Notary Public.

## IN VACATION.

BEFORE OCTOBER TERM, 1867.

THE GOODYEAR INDIA RUBBER CO.,

vs.

DAN'L B. MOORE & AL.

Before R. E. ROMBAUER, Judge, Circuit Court, St. Louis County.

September 5th, 1867.

Plaintiffs present their petition supported by affidavits praying that defendants may be cited to show cause why an injunction should not be granted to restrain them as in said petition prayed for from the commission of certain acts.

Preliminary restraining order granted on plaintiffs entering into bond in the penal sum of three thousand dollars. Bond approved. Defendants cited to appear and show cause on Saturday the 21st of September, 10 A. M.

R. E. ROMBAUER,
Judge.

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Saturday, September 21st.

Defendants appear by counsel, and plaintiffs not being ready to proceed, hearing postponed till Wednesday, September 25th, by consent of parties.

R. E. ROMBAUER,
Judge.

Wednesday, September 25th,

Parties appear by attorneys, and defendants not being prepared to proceed, at their request hearing postponed until Saturday, September 28th.

R. E. ROMBAUER,
Judge.

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Saturday, September 28th.

Parties appear by attorneys. Affidavits in support of plaintiff's and defendant's case read, and argument of counsel heard, and the Judge having fully considered the case is of opinion that the injunction prayed for in plaintiff's petition should not be granted.

It is therefore ordered and adjudged that the restraining order heretofore granted in this case on the 5th day of September, 1867, be set aside and that the preliminary injunction then granted be dissolved.

R. E. ROMBAUER,
Judge.

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STATE OF MISSOURI, } ss.:
City of St. Louis. }

I, CHARLES F. VOGEL, Clerk of the Circuit Court, City of St. Louis, State aforesaid, certify that the above and foregoing contains a true and correct copy of the petition for injunction and judges minutes in the cause wherein The Goodyear India Rubber Glove Manufacturing Company *et al.*, are plaintiffs, and Daniel B.

Moore and George B. Thompson are defendants, as fully as the same appear on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said Court at [SEAL.] office in the City of St. Louis, this 2d day of February, A. D. 1884.

CHAS. F. VOGEL,
Clerk.

[ENDORSED:]

#6647. The Goodyear India Rubber Glove Manufacturing Co. *et al.*, vs. Daniel B. Moore and Geo. B. Thompson; certified copy, petition and Judge's minutes on vacation. $5^{00}$ Clerk's fee paid Feby. 5/84.

# SUPREME COURT OF THE UNITED STATES,

## OCTOBER TERM,

## 1888.

GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY, and THE GOODYEAR RUBBER MANUFACTURING COMPANY,

*Appellants,*

*vs.*

THE GOODYEAR RUBBER COMPANY,

*Respondent.*

No. 49.

# BRIEF FOR APPELLANTS.

FREDERIC H. BETTS,

*Counsel.*

Burgoyne Quick Printing Co., Cor. Walker and Centre Sts., New York.

# SUPREME COURT OF THE UNITED STATES.

GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING COMPANY and THE GOODYEAR RUBBER MANUFACTURING COMPANY,
Appellants,

vs.

THE GOODYEAR RUBBER COMPANY,
Respondents.

## STATEMENT.

This cause was originally commenced on the 12th day of June, 1882, by The Goodyear Rubber Company, a New York corporation, in the Superior Court of the City of New York, against The Goodyear India Rubber Glove Manufacturing Company, a corporation of the State of Connecticut, and The Goodyear Rubber Manufacturing Company (also a Connecticut corporation), and George M. Allerton (a resident and citizen of Connecticut), and John D. Vermeule, whose residence and citizenship are not stated in the pleadings, but who appears by the evidence to have been a resident of New York (p. 43, fol. 95; p. 69, A. 20).

On July 20th, 1882, the defendants The Goodyear India Rubber Glove Manufacturing Company and Goodyear Rubber Company, and George M. Allerton filed separate petitions for the removal of the cause to the Circuit Court of the United States (pp. 7 and 9, and p. 17).

The bonds offered on such petitions for removal were accepted by the State Court (p. 13, fol. 24; p. 15, fol. 28; p. 17, fol. 32), and the cause thereupon removed.

The two corporations defendant filed a joint answer, and the defendants Allerton and Vermeule filed separate answers (pp. 25 to 35), and The Goodyear India Rubber Glove Manufacturing Company, one of the defendants, filed a cross-bill against the complainant, The Goodyear Rubber Company, on the 16th day of October, 1882 (pp. 21–25), which the complainant answered on December 12, 1882 (pp. 38–42).

Replication to the several answers of the defendants were filed by complainant on November 6th, 1882 (pp. 36–38), and replication to complainant's answer to the cross-bill was filed January 24th, 1883 (p. 42, fol. 93).

The subject of contention in the two suits was as follows:

The complainant, The Goodyear Rubber Company, alleged that it was a corporation organized on November 20th, 1872, for the manufacture and dealing in of rubber goods (fol. 4), and was accustomed to use in its business its corporate name, to which, it contended, it had exclusive right (fol. 6).

That the defendant, The Goodyear India Rubber Glove Manufacturing Company, was an older corporation, who had been, as alleged, prior to November, 1872, "universally known to its pat- "rons, customers and the public at large by its proper corporate "name of Goodyear's India Rubber Glove Manufacturing Company" (fol. 7).

That subsequent to the organization of the complainant company the defendant commenced to call itself by the name, "Good- "year's Rubber Manufacturing Company" (p. 4, fol. 7), and to abbreviate its full corporate name by the use of the *initials* for the words "*India*" and "*Glove*," or by employing *relatively small letters for those words* of its name (fol. 9), thereby "*constituting a* "*name for practical purposes almost identical with the names of the* "*plaintiff*" (fol. 9).

That the defendants, Allerton and Vermeule, were the principal owners and managers of the business carried on under both names, and "have done or caused to be done all the various acts and "wrongs hereinafter complained of" (fol. 8).

That this abbreviation of the original corporate name of Goodyear's India Rubber Glove Manufacturing Company, constituted "a close, unlawful and fraudulent use of the plaintiff's name" (fol. 9).

That as a result of the use of the abbreviations of the original corporate name of defendant, which have been used on signs over the defendant's place of business, at first in connection with, and

subsequently " for its principal sign " (fols. 10 and 11), the plaintiff has suffered much loss and inconvenience by diversion of letters, telegrams, etc.

The several answers of the defendants alleged in similar terms that the Goodyear's India Rubber Glove Manufacturing Company was organized under that name in 1847, for the purpose of manufacturing india rubber goods, and was licensed under the Goodyear patents of 1849 (fol. 51), and that after the expiration of said patents, and in in 1865, and continuously thereafter, has manufactured and sold very largely all kinds and classes of india-rubber goods which had been treated according to the patents of Goodyear, and had been " for up- " wards of twenty years the most prominent corporation or associa- " tion in the City of New York, engaged in the manufacture and sale " of Goodyear's rubber goods bearing the name of Goodyear as a " part of its corporate title or name used in trade, and for upwards " of twenty years from its wide notoriety as the principal corpora- " tion engaged in the sale of rubber goods in the City of New York, " having the name of Goodyear as a part of its name, has become " and been known to the trade generally by abbreviated, popular and " generally used titles of ' Goodyear's Rubber Company,' or ' The " ' Goodyear's Company,' and by other similar titles abbreviated " from the full corporate name aforesaid, in which abbreviated titles " the name of ' Goodyear ' in connection with the word ' Company ' " or ' Co., ' or in connection with some similar brief letters or words " indicating a company engaged in rubber manufacturing, has been " the distinguishing characteristic " (p. 26, fol. 52).

The said answers further alleged that said original corporation " has, by adoption of said name and acquiescence of the public " therein and by general usage, acquired a valuable right and in- " terest in said name as good-will of its business and as a trade " name, and has enjoyed and exercised the same for upwards of " twenty years, and the use of such trade name has been recognized " by the plaintiff and its predecessors in repeated business transac- " tions " (fol. 52).

That a large part of its correspondence for upwards of twenty years has been under the abbreviated names of " Goodyear Rubber Company " or " Goodyear's Rubber Manufacturing Company," or " Goodyear's Company," or similar abbreviated titles (fol. 53).

That it had registered a trade-mark in " the most generally-used " name of Goodyear's Rubber Manufacturing Company " (fol. 53), and for the purpose of protecting it had filed a certificate of incor-

poration under that name in New York as early as March 23, 1873, and its trustees and managers had subsequently duly organized the defendant corporation under that name in Connecticut (fol. 54).

The answer further alleges that the organizers of the complainant company, prior to January, 1873, had done business only under the names of "Rubber Clothing Company," or as "F. M. & W. A. Shepard," or as "Shepard & Dudley" (p. 28, fol. 54), but that about January 8th, 1873, for the purpose of injuring the defendant, and appropriating its well-known trade name and good-will, and illegitimately securing business, which had grown up under the use of the abbreviated names, organized the plaintiff under the name of "Goodyear Rubber Company" (p. 28, fols. 54–55).

That its conduct in this respect was promptly protested against (fol. 55).

That the action of the plaintiff had resulted in the diversion of business, confusion of names, and general interference and damage (fol. 55).

As separate defenses, the defendant alleges that complainant had been guilty of unfair and inequitable conduct, because the defendant having been for a number of years located in a large and prominent store on the corner of Broadway and Broome street, and having become known as *the* company at that locality, the complainant company, immediately after the removal of the company defendant from said location (which they were obliged to do owing to inability to renew their lease), moved to an opposite corner of Broadway and Broome street, and displayed a conspicuous sign, reading "Goodyear Rubber Company, Broadway, corner of Broome street" (fols. 56–57), thereby intending to represent to the public that they were the defendant corporation, who had become well known at that locality (fol. 57).

That complainant had been further guilty of unfair and inequitable conduct in untruthfully representing to the trade that it had factories at Naugatuck, Connecticut, "that being the well known loca-
" tion of the factories of said defendant corporations" (fol. 57).

The answers further alleged that prior to the organization of the plaintiff company under its name, other dealers in rubber goods had used trade titles such as "Goodyear Rubber Emporium," and "Goodyear Rubber Works," and that in view of such prior adoption " and use, the plaintiff has no right or title to the relief prayed for " in the complaint."

The cross-bill makes similar allegations to those found in the an-

swer and prays as relief, that the complainant herein may be enjoined from interfering with the defendant by the use and appropriation of the name substantially similar to the long-used abbreviations of the defendant's oldest corporate name.

It will be perceived from the above statement and an inspection of the pleadings that each party to the controversy contends that it is entitled, as against the other, to the use of the name which represents to the public that it is a company engaged in the *general* manufacture of Goodyear's rubber goods, without limitation as to any specific class or kind of such goods.

The complainant and respondent claims by virtue of its corporation on November 30th, 1872, as against the defendants.

The defendants and appellants, and the complainant on the cross-bill, claim by virtue of twenty years popular usage and acquiescence by the public in the abbreviated name, as against an intentional interference by complainant, and by virtue of its prompt protest and assertion of its rights, as against the plaintiff.

Proofs were taken at considerable length, and the decision of the Court below was in favor of the plaintiff corporation.

A decree was ordered for complainant, and the cross-bill of defendant was dismissed (pp. 155–159).

The decree was entered restraining the defendant corporation from imitating or using the complainant's corporate name by the suppression of the words "India" and "Glove," or by writing said words in smaller or obscure letters, or by the use of initial letters, to indicate said words, of a smaller or more obscure character than the letters used in the rest of the name (p. 168).

The decree, however, provided "that nothing herein contained "shall be construed to prevent the said defendants from using and "employing initial letters to indicate any of the component words of "the said defendant's name" (fol. 287).

The defendant corporations appealed to this Court (pp. 169–173).

## Assignment of Errors.

1. The Court below erred in deciding that the complainant was entitled to an injunction restraining the use of the names "Good-"year Rubber Co.," or "Goodyear Rubber Manufacturing Co.," or any abbreviations of said integral name.

2. The Court below erred in deciding that the defendant should be restrained from abbreviating its name.

3. The Court below erred in not deciding that the complainant was not entitled to relief because the name claimed by it was merely descriptive, and hence incapable of exclusive appropriation.

4. The Court below erred in not deciding that the plaintiff was not entitled to the exclusive use, as against the defendant, of its name, because such name had been in substance previously used by others.

5. The Court below erred in not deciding that the complainant was not entitled to restrain the defendant, because the defendant had itself been known by and had used a name or names substantially similar prior to any adoption by plaintiff.

6. The Court below erred in not refusing relief to the complainant on the ground that it "did not come into equity with clean hands."

7. The Court below erred in not awarding an injunction and other relief to the defendant on the cross-bill, on the ground that as between said defendant and said plaintiff the plaintiff had been guilty of unfair trading.

8. The Court below erred in not dismissing the bill for lack of jurisdiction.

## Facts Proved.

A brief statement of the facts proved in this cause will render more intelligible the points presented.

These facts will be stated in their historical order.

The Goodyear India Rubber Glove Manufacturing Company was incorporated under that name in 1847 in Connecticut.

It at first only manufactured gloves and articles of that kind under license from Charles Goodyear (p. 63, fol. 125).

On the expiration of the Goodyear patents, about 1863, the company went gradually into the manufacture of rubber goods *generally* (fol. 126).

And after such general manufacture of rubber goods had commenced the company began to be known popularly by abbreviated names, *all of which had only one feature or characteristic, to wit : the name was generic, indicating a general business in Goodyear rubber goods*, without limitation to any special class of rubber, such as gloves.

The abbreviated and generic name was variously put, as follows ' " Goodyear's I. R. G. Co.," " Goodyear's I. R. G. M'f'g. Co.,' " Goodyear's India Rubber M'f'g. Co.," " Goodyear's Rubber M'f'g. Co.," " Goodyear's M'f'g. Co.," " Goodyear's Rubber Co.," " Goodyear's Company," and " Goodyear Company" and " Goodyear's Co."

Mr. Kellogg, formerly President and once Vice-President of the Company, says (fol. 126) :

" As early as the year 1867 these abbreviated names had become " very common, and we received a large number of letters and orders " under those names. We were known to the trade generally by " some of those names, as well as by our full name. I think outside " the trade we were recognized by the abbreviated names in the City " of New York, in our Government licenses and other papers. (See also Vermeule, p. 44, Qs. 15–23 ; Walker, p. 90, Q. 91.)

In the year 1872 Mr. Shepard, now President of the Complainant Company, and then President of The " Rubber Clothing Company," submitted a proposition to consolidate the business of The Rubber Clothing Company with that of the defendant corporation (p. 50, fol. 106 ; Addition, p. 13, fol. 21).

This proposition was promptly declined by the defendant (p. 50, fol. 106 ; Addition, p. 13, fol. 21).

In November, 1872, the complainant company incorporated itself in New York, under the name of the " Goodyear Rubber Company " (Ad., p. 3, Qs. 6–7).

It commenced business about May, 1873 (Ad., p. 18, Q. 117).

Protest was promptly made by the defendant company against the assumption of this name by the complainant, as substantially the name by which it had long been addressed and as tending to deceive the public and to injure the defendant's business (Ad. p. 31, fol. 45).

The defendants' company sent circulars to all of its customers, warning them that the new concern had no connection with them and was a different concern (p. 95).

And as years went on and the business of the new concern, the complainant, grew and became more and more strongly competitive, the defendant company have continued to insist with more and more

persistence that they and not the complainant were entitled to whatever benefit and advantage was to be derived from recognition under the *generic* abbreviated name, which signified a company having a general business of manufacturing Goodyear Rubber Goods (p. 52, Qs. 45–47).

In 1882, the plaintiff, somewhat audaciously, commenced this action to restrain the defendants from using the abbreviations by which the defendant company had been so long known and addressed, claiming that its business was damaged thereby.

## FIRST POINT.

### The name "Goodyear Rubber Company," is not one which is capable of exclusive appropriation.

I. This is not, strictly speaking, a case of alleged infringement of a "trade-mark."

A right to a trade-mark can only be acquired by applying such mark to some article of traffic, and by putting such article marked with the mark upon the market.

*Snyder vs. Williams, 44 O. G., 1400.*

The bill does not allege nor do the proofs show that any goods have been marked in this way.

The suit is, therefore, not strictly a trade-mark suit.

II. Nor can it be sustained on the theory of a suit for *unfair trading.*

In such a suit relief is granted against conduct which satisfies the Court that a *defendant has represented to the public* that he is the plaintiff and that his goods are those of plaintiff.

*McLean vs. Fleming, 96 U. S., 831.*
*Avery vs. Meikel, 27 O. G., p. 1027.*
*Sawyer vs. Horn, 1 Fed. Rep., 24.*
*Sawyer Co. vs. Hubbard, 32 F. R., 388.*
*Moxie Co. vs. Baumbach, 32 F. R., 205.*

The Bill does not allege (certainly in any definite way) a case of unfair trading.

It alleges an incorporation by complainant under its corporate name, and a use by defendants in various ways on its signs on its own store and otherwise, of a name which is so nearly similar to that of the complainant as to occasion "much loss and inconvenience."

But though it calls this assumption of a similar name by defendant "fraudulent," it nowhere alleges that the defendants have asserted or have intended to assert, or to represent to the public that their concern is the complainant company, or their goods the manufacture of the complainant company; mere general allegations of fraud amount to nothing.

*Stearns vs. Paige*, 7 How., 819.
*Beaubien vs. Beaubien*, 23 How., 190.

The proofs also are wholly barren of any attempt to establish any unfair trading as chargeable to the defendant. They simply show that defendant has from 1873, for ten years, uniformly and with greater and greater persistency, as time went on, asserted its right to be known and recognized by a name similar to that under which the complainant incorporated itself.

These notices and claims to recognition by that name growing more and more peremptory as the growth of the plaintiff's business rendered their interference more and more troublesome.

The printed notice mailed to every customer in 1873, was specific, saying that the defendant *was not the complainant* and *had no connection* with that concern (p. 95).

The protest to the plaintiff in the same year, 1873, was specific in claiming the right to the name (p. 31 Add.).

The circular of 1875 reasserts the claim (p. 96 Add.), and again advises customers to distinguish the address. The persistence of customers, too, in adhering to the abbreviated name, and the inevitable confusion induced by plaintiff's growth, led to repeated circulars "*in large quantities*" (Add. p. 8, Q. 59 and pp. 91–93), in which both the full and more commonly used abbreviations are set out distinctly, *but always with the full address of defendant.*

The opinion in the Court below does not in the most remote manner charge the defendant with any unfair conduct. It states simply a case of confusion arising out of similarity of names.

III. There being no distinct allegation in the bill, and absolutely no proof on the part of the complainant, and no finding of the Court below that there had been any unfair conduct on the part of de-

fendants, the complainant's title to relief must stand wholly and solely upon its ability to show that it has an exclusive right to the name which it has selected in its Articles of Incorporation.

We submit that it cannot do so for two reasons, viz. :

(*a*) Because the name in itself is incapable of exclusive appropriation, because purely descriptive.

(*b*) Because substantially the same name had been previously used by others.

(*a*) The name "Goodyear Rubber Company," is a purely descriptive name, and as such is incapable of exclusive appropriation.

Although this case is not a trade-mark case yet its proper determination is to be found by following the principles which have been laid down in trade-mark cases, as such.

One of the most familiar of all rules in such cases is that names cannot be exclusively appropriated which are properly descriptive, and which others can use with equal truth as referring to themselves or to their products.

It cannot for a moment be doubted that "Goodyear Rubber Company" means simply and solely a company manufacturing Goodyear's rubber goods.

Perhaps Mr. Goodyear himself, if he had originally organized a company and had styled it "Goodyear's Rubber Company," could have retained the exclusive right to that name even after the expiration of his patents.

But even this is doubtful.

*Singer Co. vs. Stanage, 6 F. R., 279.*
*Singer Co. vs. Reilly, 11 F. R., 706.*
*Singer Co. vs Loog, 8 Appeal Cases (House of Lords), 15.*
*Brill vs. Singer Co., 41 Ohio, 127.*
*Fairbanks vs. Jacobus, 14 Blatch., 337.*
*Gally vs. Colts Co., 30 F. R., 118.*
*Lorrilard vs. Pride, 28 F. R., 434.*

But however this might have been with Mr. Goodyear, surely a concern who came into existence in 1872, long after the Goodyear patents and Goodyear rubber, as an article, had become public property, cannot arrogate to itself the exclusive designation which means simply and solely that it is a company manufacturing Goodyear's rubber goods.

If this be so then concerns may similarly exclusively appropriate

to themselves, even at this late day, names which indicate a business common and equally free to all.

One concern may call itself the "Carpet Company," another the "Coal Company," another the "Salt Company," another the "Railroad Company," and each may prevent any other company from using such generic name.

This cannot be. A concern which deliberately adopts a mere generic name indicative of the character of its business, must bear the natural confusion consequent on such act.

In *Delaware & Hudson Canal Co. vs. Clark, 13 Wallace, 311,* this Court said:

"To entitle a *name* or mark to equitable protection as a trade-
"mark the right to its use must be exclusive, and *not one which*
"*others may employ with as much truth as those who use it;* and this is
"so although the use by a second producer in truthfully describing
"his product of a name or combination of words, already in use by
"another, may have the effect of causing the public to mistake as
"to the origin or ownership of the product. Purchasers although
"mistaken are not in such cases deceived by false representations,
"and equity will not enjoin against telling the truth."

And again (*Id.*):

"No one can claim protection for the exclusive use of a trade-
"mark or *trade-name,* which would practically give him a monopoly
"in the sale of any goods other than those produced or made by
"himself. If he could the public would be injured rather than pro-
"tected, for competition would be destroyed. Nor can a *generic*
"*name* or a name *merely descriptive* of an article of trade, of its
"qualities, ingredients, or characteristics, be employed as a trade-
"mark and the exclusive use of it be entitled to legal protection."

These principles are reiterated by this Court in *Amoskeag Co. vs. Trainor, 101 U. S., 51.*

It was expressly admitted, on cross-examination, by the president of the complainant company that the name of the company was purely descriptive, and adopted *simply because it was descriptive.*

Mr. Shepard said (Add., p. 15, fol. 23, and p. 20, fol. 30):

"69 x-Q. What led you to organize the so-called Goodyear Rub-
"ber Company?

"A. Well, we thought it was an advisable thing for us to do."

* * * * * * * * *

"146 x-Q. You don't answer very definitely as to what the reasons

" were that induced you to organize this Goodyear Rubber Co.
" You state you thought it was advisable. Won't you give us in de-
" tail the reason which led you to organize the Goodyear Company? "

" A. Well, sir, we proposed to do a more general business than we
" had at any time before, and we thought that the name under which
" we had done some of this business at those western places seemed
" to limit the business to a particular line of goods, so we were con-
" sidering choosing a name that would be more general in its char-
" acter. That was the line of reasoning." * * *

" 149 x-Q. Why did you select the name of the Goodyear Rub-
" ber Company?

" A. Because we thought, under all the circumstances, it was as
" good as any other we could think of." * * *

" 152 x-Q. Can't you give any more definite answer than you have now given?

" A. I am unable to see how I can.

" 153 x-Q. Now, what was there about the name that rendered
" that particular name desirable to you?

" A. Now, I think of it, I can. We had some licenses from Chas.
" Goodyear to manufacture some rubber goods—I remember that
" now—and we had thought of manufacturing these goods."

" 154 x-Q. What was it in the name that you selected that was
" particularly desirable to your business—the name of Goodyear
" particularly desirable? "

" A. Well, it was, as I said, a general name that applied to all
" branches of the india-rubber business, and we thought it was as
" good a combination as any as we could think of.

" 155 x-Q. Did you expect to get any advantage from the use of
" the name ' Goodyear ' ?

" A. Not any particular advantage.

" 156 x-Q. Has that part of the name been of any advantage to
" your business, do you think?

" A. Well, I don't know that it has, particularly ; it may have
" and it may not.

" 157 x-Q. You could not say that the name of Goodyear is of
" any value to your business?

" A. I don't know that it does any harm or good.

" 158 x-Q. How about the name of ' Rubber,' did you expect to
" get any particular advantage from using that?

" A. The three words designated, as we thought, the general
" character of the business that we proposed to do—Goodyear,
" Rubber and Company.

* * * * * * *

"165 x-Q. Did you attach any importance to the word 'Good-
" 'year' in connection with Company, as distinguished from any
" other word that you might have adopted?

"A. *It indicated that we dealt in goods which were manufactured
" under the process of Charles Goodyear.*

"166 x-Q. Aside from that, was there any peculiar significance
" in the name?

"A. *Well, it seemed to be appropriate to the line of goods which
" we were dealing in.*

"167 x-Q. Has the use of the word 'Goodyear,' in connection
" with the name 'Company,' been of advantage to your business?"

"A. I am unable to tell you.

"168 x-Q. Do you think that there is anybody that could tell
" better than yourself?

"A. I don't know how that is, I am sure.

(*b*) The name of the complainant is also incapable of exclusive appropriation by them, because it was not, in 1872, substantially new.

1. The defendant company had been incorporated ever since 1847, under the title of "Goodyear's India Rubber Glove Manufacturing Company."

From 1862 and onwards it had been known to a considerable portion of its customers, at least, by abbreviated names, all of which were substantially identical to that of complainant's.

This branch of the case will be treated in greater detail under "SECOND POINT."

2. There had also existed, prior to 1872, the following concerns:

THE GOODYEAR RUBBER WORKS (used from 1868–1870).
Vermilyea (Add., p. 60, x-Qs. 100–105; Complts.' Exh. Nos. 39, 40, 41, 42, 43, 44 and 45, pp. 150–155).

GOODYEAR'S RUBBER EMPORIUM (used for 40 years).
Gatchel, (p. 125, x-Q. 6; Complainants, Exhibit No. 38, p. 149).

THE GOODYEAR'S METALLIC RUBBER SHOE COMPANY.
Shepard (Add,. p. 25, x-Q. 220).

GOODYEAR MANUFACTURING COMPANY (p. 162), incorporated in Massachusetts in 1845 (*by Henry B. Goodyear and others*).

This last was introduced in connection with a petition for rehearing, which was disallowed (pp. 159–164).

The Court below found the fact of prior use of such names in favor of the defendant, saying (fol. 257, p. 156) :

" Neither party makes any claim of exclusive right to use the " word 'Goodyear' alone, that word having become a generic term " of description applied to a large class of india-rubber fabrics be- " fore either party became a corporation, or the word 'Goodyear' " in combination with 'rubber.' There were trading concerns " called the 'Goodyear Metallic Shoe Company.' 'The Goodyear "' Rubber Works' and the 'Goodyear Rubber Emporium,' before " either party claimed the right to the name in controversy."*

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* This last remark is not quite correct, as *several* of the above names were not used so early as the commencement of the recognition of DEFENDANTS, under its abbreviated names, though they were *all prior to complainants use.*

Some of the sentences in the opening part of the opinion of the Court below may convey the impression that the defendant conceded that the name was one capable of exclusive appropriation.

This is not correct as may be seen from the brief—but whether it did so or not *in argument* was quite immaterial, as it might insist that the contrary proposition of law was more correct, but an examination of the pleadings shows clearly that the defendant company insisted by its answer that the name was incapable of exclusive appropriation by the defendant because previously used (p. 29, fol. 57), and it only insisted on its claim to the possibility of exclusive appropriation in its cross-bill, by reason of the admission to that effect by the complainant's own suit (fol. 45).

The complainant may contend that it being the first company to *incorporate* itself under the title of the Goodyear Rubber Co., is entitled to protection against others using such name even though they had been previousaly known to some extent by it. This is unsound.

To make exclusive right to a name or symbol, such use must be *new.*

If ever before used as applicable to a like article, it cannot be exclusively appropriated.

Van Biel vs. Brocott, 82 N. Y., 630.
Thornton vs. Crowley, 47 Supr. Ct. (J. & S.), 527.

It is only when a person's *prior* and exclusive use to a trade-mark is established that the test is to be applied to determine infringement, *i. e.*, whether the action by defendant is calculated to deceive.

Thornton vs. Crowley, 47 Supr. Ct., 527.

" Before the Court can be called upon to apply *any* test at all, plaintiff's prior and exclusive right must be clearly established (*Id.*, p. 529).

Enoch Morgan's Sons vs. Truyall, 89 N. Y., 292.
Popham vs. Wilcox, 38 Supr, C., 274.

## SECOND POINT.

**The name Goodyear Rubber Company was one by which the principal defendant company had, long prior to plaintiff's incorporation, been known by a considerable number of its customers, and if it be one which can be exclusively appropriated, by either party as against the other, the superior right is in the defendant.**

This subject will be treated under several heads.

*1. The Organization of the Defendant Company.*

1. The defendant company, The Goodyear's India Rubber Glove Manufacturiug Company, was incorporated in the State of Connecticut in the year 1847.

(See Articles of Incorporation, dated June 1, 1847, p. 109.)

2. In the same year, 1847, they commenced business in the City of New York, with their factories at Naugatuck, Connecticut, and they have continued the same ever since.

They were the first manufacturers and dealers in rubber goods who adopted a name containing in combination the words now in controversy, namely, the words "Goodyear," "Rubber," "Manufacturing," and "Company."

3. Until the expiration of the patent of Charles Goodyear, under which the manufacture was conducted, the business was confined to the manufacture of gloves and articles of that kind; but upon the expiration of that patent they commenced the manufacture of other rubber articles.

Evidence of Stephen W. Kellogg, p. 62, fol. 125, Q. 3, T. R.

4. In 1867, the articles of association were amended, and the defendants were allowed by this charter to manufacture and sell "*all kinds*" of rubber goods.

See Exhibit Amendment (page 105 R).

*2. The recognition of the defendant corporation by the public and trade under the abbreviated titles "Goodyear Rubber Company,"*

*"Goodyear's Rubber Manufacturing Company," and other similar titles, for many years prior to the assumption of the former name by the complainant.*

*(a) The beginning of this recognition in 1862.*

From about the year 1862, the defendant company began to be addressed by the public and the trade by various abbreviated titles, which were not substantially different from that which the complainant claims to control.*

See package of letters of the year 1862, Exhibit Letters, Package No. 13, Vermeule Ev., p. 47, T. R., Q. 23, and Kellogg Ev., p. 63, T. R., Q. 3.

*(b) The increasing recognition by letters and orders from 1867 to 1873, when the complainants assumed their present title.*

As early as the year 1867 this use of the abbreviated title by the trade and public in addressing the defendant company (we say "title," for the variations were immaterial, all forms being in substance the one in controversy and including both the title "Goodyear Rubber Company" and "Goodyear's Rubber Mfg. Co.,") had become very common, and from that time onward to the year 1873, when the complainants commenced business under their present title, this public use of their title became more and more frequent until the years 1871 and 1872, when a "*very large part of our (defendant's) business was done under those names*" (Kellogg, p. 63, R., fol. 126).

From the evidence of Mr. Vermeule, the present president, and of Judge Kellogg, the former president of the company, and from the letters and orders produced by them and read before the Court (see pages 45 to 48, R., and pages 63, 64, R., and 66, 67), we find the following *documentary* proof:

In 1867 there were 16 letters and orders addressed to the "Goodyear Rubber Manufacturing Company," with various abbreviations of the last two words, and 23 others to the "Goodyear Rubber Com-

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* The bill of complainant's expressly alleges that the use of *initial* letters instead of "India" and "Glove" or the printing those words in *smaller type* are some of the above recited abbreviations which cause damage (p. 4, fol. 9). Mr. Sheppard, plaintiff's president, swears that such abbreviations as "Goodyear's I. R. G. Co.," or "Goodyear's I. R. G. M'f'g Co.," or "Goodyear's I. G. Co.," are abbreviations which are mistaken for "Goodyear Rubber Co.," and cause confusion (p. 28, Qs. 253-9).

pany," or "Goodyear India Rubber Company," with similar abbreviations.

In 1868 256 were addressed to the "Goodyear Rubber Company," or "Goodyear India Rubber Company," with various abbreviations; such as "Rub." and "R." for Rubber; and there were 199 addressed to the "Goodyear Rubber Mfg. Co.," or "Goodyear Mfg. Co.," with similar abbreviations. There were also 123 addressed to the "Goodyear Co.," or "Mr. Goodyear."

In 1869 there were 322 addressed to the "Goodyear Rubber Company," or "Goodyear India Rubber Co.," with various abbreviation, such as "Rub.," or "Ind. Rubb.," or "I. R.;" and there were 76 to the "Goodyear India Rub. Mfg. Co.," or "Goodyear Rubber Mfg. Co.," with similar abbreviations, and 109 to "Goodyear Co.," or "Mr. Goodyear."

From 1865 to 1870, in addition to the above, there were 759 addressed to "Goodyear Rubber Company," with or without the word "India," and 898 to "Goodyear India Rubber Mfg.," with or without "India" (pp. 66, 67, R.), and 176 addressed to "Goodyear & Co."

In 1870 there were 254 addressed to "Goodyear Rubber Company," with or without the word India, and with various abbreviations. There were 126 addressed to "Goodyear Rubber (or India Rubber) Mfg.," and 59 to "Goodyear Co." or "Mr. Goodyear."

In 1871 there were 200 addressed to "Goodyear Rubber Company," a few having "I." or "India" before "Rubber," and there were 91 others with the word "Mfg." added, various abbreviations being used, and 64 to "Goodyear & Co.," or "Messrs. Goodyear."

In 1872 there were 792 addressed to the "Goodyear Rubber Company," some of these also having the word "India" or "I." before the word "Rubber," and there were 279 addressed to "Goodyear Rubber Mfg. Co.," some of them also having "Ind." or "I." before the word "Rubber"; and there were 172 to "Goodyear Co.," or "Messrs. Goodyear."

Hence, we see that during the five or six years prior to the commencement of the business of the complainant the defendant company had became widely known by the very title they are now alleged to have fraudulently adopted, no less than four thousand three hundred and twenty-six (4,326) such letters being produced in evidence.

This habit of the trade was exhibited in the majority of the letters in which they were left free to use the name most familiar to

them. For we find that the defendants, at least as early as the year 1868, sent out "return envelopes" printed with the full title of the company, but on which the words "GOODYEAR" and "RUBBER GOODS" were most prominent.

Kellogg's Ev., p. 83, R., and "Defendant's Exhibits Return Envelopes of 1868," pp. 99–100, R.
Kellogg's Ev., p. 69, R., x-Qs. 23–25.
Leaycraft's Ev., p. 88, Q. 7., R.

And seventy-five per cent. of the letters were returned in the printed envelopes.

Leaycraft's Ev., p. 88, Q. 8, R.

Hence, the opportunity to use abbreviated titles occurred only in the remaining twenty-five per cent., the rest being controlled by the use of the return envelopes.

Mr. VERMEULE * says that during the years 1871 and 1872 the use of these abbreviated titles occurred "*in a majority of instances, where we had no control † how they should address us*" (p. 45 R., Q. 20), and during the previous years, Judge KELLOGG says, "*a very large proportion had some abbreviated name*" (x-Q. 30, p. 70, R.; see, also, p. 63, Q. 3, R.).

More letters and orders were addressed to the defendant by the name of "Goodyear Rubber Company," the name *now* claimed by the plaintiff, in 1866 and 1867, than by any other abbreviated title. (Kellogg's Ev., pp. 66–67, R.).

Mr. Van Vliet, who commenced to act as bookkeeper November

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* The recognition of the defendant company by these abbreviated titles in so many hundreds of instances, and by so many hundreds of different dealers throughout the country, is important in two aspects, viz.:

First, it proves that the defendant company had *acquired* the abbreviated titles *by usage.*

Second, it proves *what* the *material* and *distinctive* words in the defendant's full name were, *as* the company was known to dealers, and that such distinctive words were not "Glove," but that it was known as *the* company—known as *the Goodyear Rubber (or Rubber Manufacturing) Company*—which was doing a *general* business, in contradistinction from other companies dealing only in special classes of rubber goods.

† That is, when the printed *return envelopes* were not used. And even these made the words "GOODYEAR'S RUBBER GOODS" most prominent.

1st, 1872, says that at the time "*a large percentage* of the letters and checks were so addressed" (p. 73, Qs. 5, 6).

(*c*) *recognition by printed slips distributed to the trade.*

Among these orders, as early as the year 1867, we find also a number of *printed slips* addressed to the "Goodyear's Rubber Mfg. Co." (the very title complained of).

See the "Exhibit Slip and Letter" on page 100, R., and Kellogg's Ev., pp. 83–84, R.

This is very important as *a recognition in a formally printed paper of this abbreviated title*, six years before the organization of the complainant under its present title.

These printed slips were distributed among the trade, and large numbers of them were sent to the company with orders.

Mr. Walker says that from fifty to one hundred of them were received.

Deft.'s Record, p. 91, R., Q. 3.

Only three of them have been produced, and this tends to show how small a proportion of the whole number of orders and letters actually sent by abbreviated titles have been preserved.

(*d*) *The recognition by the Government License.*

We find that the title "Goodyear Mfg. Co." was given to this company in the year 1862 by the license of the United States Government to carry on the business or occupation of retail dealers.

See license printed on p. 97, R., date November 20, 1862..

(*e*) *By the receipts signed by the defendants.*

The complainants after this testimony was produced were obliged to abandon the position taken in the complaint that the defendants had been "universally" known "at all times" by its "proper corporate name," and they next maintained that the *only* abbreviated title was "Glove Company."

See evidence of Mr. Shepard, Add Rec., p. 37, Re-d. Q. 25.

But this was disproved.

*They* produce a number of receipts from 1862 to 1874 (Add. Rec., pp. 100–101, and pp. 116–122, R., and pp. 129–133, R.), but it is noticeable that out of 182 specimens *only one is signed "Glove Co."*

(No. 15, page 117, R., Q. 32). More of them are signed "Goodyear's I. R. Glove Mfg. Co." than in any other way.

Many are signed

GOODYEAR'S I. R. G. MFG. CO.

(See Nos. 70, 71, p. 121, R.; 105, 106, 107, 108, 100, 110, 111, p. 130, R.; 151, 165, pp. 131–132, R.)

Several are signed

GOODYEAR'S I. R. MFG. CO.

(See Nos. Q. 31, p. 41, Q. 117–119, R.; Q. 72, No. 47, 74, 49, 77, 62, p. 121–122, R.)

The title

GOODYEAR I. R. CO.

Is also found (see No. 48, p. 120, R.).

Thus the complainants have themselves proved that the abbreviated title in question was used.

A good many receipts are signed "Goodyear Glove Co." or "Goodyear I. R. Glove Co." But it is singular that with the above evidence before him Mr. Shepard should testify that "Glove Co." was the common designation, when, in fact, the words "Goodyear" and "Company" are *shown by their own documentary evidence* to have been *the most permanent words in the title.*

Mr. Ropes is called (p. 113, R., 10 Q., rebutting testimony) to say that he knew the company by the name "Glove Co."; but he *cannot specify any one who used this title* (1 x-Q., p. 113, R.); he cannot tell how often he has heard it called so, nor name any one to whom he so called it (p. 113, R., x-Qs. 2, 3).

Mr. Walker, who was formerly treasurer of the defendant, and is now *at personal enmity with the defendants* (page 123, R., x-Qs. 7 to 10), is called to produce some of the receipts above alluded to; and he *says* that the defendants were sometimes addressed as the "I. R. Glove Co.," or the "Glove Co.," and sometimes "Goodyear Rubber Company," and "Goodyear Rubber Manufacturing Co." (Q. 9, p. 115, R.)

The error of the *first part* of this statement (the last part *is exactly what defendants claim)* is shown by Judge Kellogg, who produces *all the letters containing abbreviated titles*, and *not one of the four thousand letters produced* contains the address "Glove Co." or "I. R. Glove Co."

It is a curious fact also that among receipts produced, the two signed by Mr. Walker himself are :

GOODYEAR I. R. MFG. Co., per Robert S. Walker. (See No. 13, page 117, R., dated October 1st, 1862.)

GOODYEAR'S I. R. GLOVE MFG. Co., per Robt. S. Walker. (See No. 99, page 129, R., dated Feb. 1, 1866.)

These show how the witness himself was accustomed to abbreviate the title.

Mr. Gatchell also, who has desk-room *free* in the office of complainant (p. 125, R., x-Qs. 12 to 14), unites in this effort to make "Glove Co." and "India Rubber Glove Co." appear to be the title by which the defendants were accustomed to signed their name (Q. 11, pp. 124, R.), thus omitting the work "Goodyear." He professes to have had many business transactions with them; but when obliged to produce his documentary proof *he cannot produce a single receipt* signed by either of these titles (see his receipt book and the titles in detail, pp. 129–133, R.), and the word "Goodyear" is given *in full* in every receipt but half a dozen, where the title is "G. I. R. Glove Mfg. Co." (p. 129, R.).

This theory that "Glove Company" was the only or was the usual title cannot for a moment be considered, in view of the letters produced. Judge Kellogg says: "From an examination of the correspondence and orders, I do not find that any parties in the trade in the City of New York recognized us distinctly as the Glove Company by the use of the word 'Glove,' except the Rubber Clothing Company and *the companies with which Mr. Shepard was connected*" (p. 63, R.). He searched for "all sorts of abbreviations" (x-Q. 39, p. 70, R.), and the number of letters addressed to Goodyear Glove Company must therefore have been comparatively small.

Mr. Vermeule says that the complainant company and their predecessors, the Rubber Clothing Company and W. D. Shepard were the *only* customers who addressed them as the Glove Company.

The efforts of Shepard and of his counsel to saddle the defendant with the title "Glove Company," *omitting even their invariable title of "Goodyear,"* are very amusing. They continually speak of the company as Glove Company, and this name is *forced* upon the witnesses. See the attempt to make Mr. Hodgman say he had generally known it as "Glove Company" (page 141, R., Q. 38), and his refusal to fall into the trap.

The evidence of the two or three witnesses that they knew

the company by the name "Goodyear Glove Company" shows an *additional* abbreviated title, but does not even tend to contradict the evidence that others knew and familiarly addressed the complainant as "Goodyear's Rubber Mfg. Co." and "Goodyear Rubber Co." for many years before 1873.

Judge KELLOGG says (p. 71, R., x-Q. 43):

"They were better known as 'The Goodyear Rubber Manufac-
"turing Company' or the 'Goodyear Rubber Company,' for ten
"years prior to 1873, or after they engaged in the manufacturing of
"a general line of Goods."

Mr. Vermilye, *the complainant's witness*, admits that from 1868 to 1873 the defendants "*were in the habit of abbreviating their name*" (p. 50, Add. Rec., Q. 28).

We submit, therefore, that the proofs are overwhelming that the defendant company was known to the trade, and very generally addressed, and filled orders and answered letters by the above titles and other similar abbreviations from about the year 1862, and that this custom continued to increase until in the year 1872 (just before the adoption by the defendant of the title under which they bring this suit) *the greater part of defendant's correspondence not contained in "return envelopes" was addressed to them under these abbreviated* titles.

Bills and letters in which this was done in upwards of *four thousand* instances are *produced*, and the probability is strong that the same practice was followed in unnumbered instances where the records were not preserved.

(*f*) *The predecessors in business of the complainants themselves had used a similar abbreviated title in addressing the defendants.*

The answer alleges (p. 27, R.):

"4. And these defendants further show that the complainant herein
"has no just or equitable title to use the name claimed in the bill
"of complaint as against these or any of the defendants, but the
"facts in relation to said matters are as follows, viz.: prior to the
"year 1873 the persons composing the corporation or association
"plaintiff, now calling itself the Goodyear Rubber Company, did
"business only under the name of the Rubber Clothing Company or
"as F. M. & W. A. Shepard, or as Shepard & Dudley, and as
"such were well known to the trade as a different corporation, or
"association, or firm, from said defendant corporation."

It appears that Mr. Shepard, who has been president of the complainant company since its organization in 1873, has been president of the "Rubber Clothing Company" since 1863 (Add. Rec., p. 2–3, x-Qs. 4, 5). This company has also been engaged in the same business as the defendant in the City of New York (x-Qs. 7 to 12, Add. R., p. 3), and one of their competitors (Add. Rec, p. 13, x-Qs. 36 to 40) ever since its organization; and it *sold its business and stock* in St. Louis, San Francisco and Chicago *to the complainant* (Add. Rec., p. 16, x-Qs. 81, 82).

Mr. Shepard also did a similar business in New York under the firm name of "F. M. & W. A. Shepard" from 1857 to 1865 (Add. Rec., p. 10, x-Q. 1), and afterwards as "Shepard & Dudley" (Add. Rec., p. 10, x-Qs. 2, 3).

The defendants produced a receipted bill of the "Rubber Clothing Company," dated January 18th, 1865, which is addressed to

"GOODYEAR I. R. G. Co."

See Exhibit, p. 107, R.

This is identified by Mr. Shepard (p. 30, Add. Rec.).

The defendants also produced a receipted bill from F. M. and W. A. Shepard, dated June 13th, 1865, which is also addressed to

"GOODYEAR I. R. G. Co."

See Exhibit p. 106, R.

This also is identified by Mr. Shepard (p. 29, Add. Rec).

Thus the houses of the immediate predecessor of the complainant company and of the gentlemen who were chiefly active in organizing that company (see below) both recognized the defendant under one of the abbreviated titles *now said to do so much injury* to them, and to be used with the result to deceive the public.

Mr. Shepard is also obliged to make what we believe the Court will regard as an admission on cross-examination that *he knew* that the defendant, prior to May, 1873. had been addressed as the "GOODYEAR RUBBER COMPANY (Re-x-Qs. 80, 81, 82, 83, p. 43, Add. Rec.,).

In answer to this the complainants assert that their name, "Goo lyear Rubber Company," has been recognized by the defendants in formal contracts; and they put in evidence an agreement relating to dress shields.

This, however, was not in any sense a recognition of the *right to use* the name, though, of course, it was a recognition of the fact that the company of that name existed.

Judge KELLOGG says in regard to it (p. 65, R.):

"8 Q. Do you know anything about the circumstances under "which the defendant, 'The Goodyear's India Rubber Glove Manu- "facturing Company,' entered into an agreement regarding dress "shields with the complainant, 'The Goodyear Rubber Company' "and 'The Rubber Clothing Company,' if so, please state?

"A. I was consulted by the president of our company, Mr. Aller- "ton, upon the matter of those contracts before they were executed. "Mr. Allerton objected strongly against signing a contract with the "name 'Goodyear Rubber Company' in it, as representing the "other party. The contract we considered a valuable one to us as "well as the other party, and rather than lose the contract Mr. "Allerton and Mr. Vermeule decided it was best to sign it.

"9 Q. Was there any intention on the part of the defendant in "signing that contract or agreement to recognize Mr. Shepard's "company under its title of 'Goodyear Rubber Company'?

"A. There was none. We considered 'The Rubber Clothing "Company' and 'The Goodyear Rubber Company' one and the "same thing in our discussion on the subject."

Mr. Vermeule also says (p. 52, R.):

"48 Q. The complainants have put in evidence a contract "between the defendants and the Rubber Clothing Company and "Goodyear Rubber Company in regard to dress shields; will "you please explain why that contract was entered into by your "company?

"A. That was a valuable contract, and we found it necessary, "after mature consideration, to include the 'Goodyear Rubber "Company' in the contract, in order to bind Mr. Shephard, who "was president of both the 'Rubber Clothing Company' and the "said 'Goodyear Rubber Company.' I mean that he was doing "the same sort of business under each of these names, and that he "might have broken the contract as president of the 'Goodyear "Rubber Company,' in which case we considered we might have "no redress.

"49 Q. You did not then intend the signing of this contract as "in anyway a recognition of their right to use the name 'Goodyear "Rubber Company'?

" A. No; we continued our protest after signing that contract, " the same as before."

There is, therefore, nothing in the signing of this agreement to deprive the defendant of the right to be known by the abbreviated name which had been acquired by *long public use and acquiescence.*

(*g*) So universally were these abbreviated titles recognized by the public and the trade, that *prior to the year 1870* there were discussions among the directors of the company at several different times as to changing the name of Goodyear's India Rubber Glove Mfg. Co. for a shorter name, leaving out the word " Glove " (see Judge Kellogg's Evidence, p. 64, R., Q. 5).

" The idea was to make a shorter name and to use one of the " abbreviated names " (*Id.*).

An examination of the letters and orders in evidence shows that many hundred different firms and companies in all parts of the country had recognized the defendant by said abbreviated titles.

*3. This recognition of this abbreviated title by the public and trade had been naturally induced and promoted by the defendant before the complainant existed under its present name.*

(*a*) *Because they were the largest and best known concern doing a business and having the name of* " GOODYEAR."

It appears from the evidence of Mr. Vermeule and Judge Kellogg that the defendant company had been for many years the most prominent corporation in the City of New York engaged in the manufacture and sale of Goodyear's rubber goods, and had acquired wide notoriety as the principal corporation engaged in that business which had the word " Goodyear " as part of its name.

As early as the year 1870 the company had agencies in Chicago, Cincinnati and Philadelphia (p. 44, R., Q. 11), and was selling in every city of the Union.

Mr. Vermeule says that, as to variety, they " dealt the largest in the country " (Q. 14), and that at the time he became connected with the company, which was 1870, there was *no other organized company* which was doing a general rubber business which had the name of " Goodyear " as part of its name or title (see Qs. 16–18, p. 45, T. R.).

Judge KELLOGG says: " I think the defendant company was the

" only company before the year 1873 engaged in the manufacture " of a general line of rubber goods that had the words 'Goodyear " Rubber' and 'Company' combined in its name" (p. 61, R., Q. 14).

(*b*) *By the use of the word "Goodyear" as the most prominent word in the signs of the defendant company.*

This was the custom of the defendants for may years prior to the incorporation of the complainant company under the present title.

The sign used upon the store on Broadway, from about the year 1864 to the present time, was "Goodyear's Rubber Goods," thus:

GOODYEAR'S
RUBBER
GOODS.

The "Goodyear" was very large and prominent (see Vermeule's evidence, p. 54, R., x-Qs. 69, 70 and p. 49, R., Qs. 24–5, and the photograph of defendant's sign, No. 1, p. 49, R. Qs. 31, 32).

(*c*) *By the use of the word "Goodyear's" as the most prominent word of the billheads.*

The billheads used by defendants also had the word "Goodyear" more prominent than any other word of their incorporated title, and the words "Rubber Goods" also very prominet, thus:

GOODYEAR'S
India Rubber Glove M'f'g Co.,
MANUFACTURERS AND DEALERS IN
RUBBER GOODS
OF EVERY DESCRIPTION,

so that the words "Goodyear's Rubber Goods" would strike the eye (see evidence of Van Vliet, p. 91, R., and see the bill-heads used by the company in the year 1874, printed on page 96, R.). This style of bill-heads illustrates that used by the company prior to 1873 (see p. 80, R., Re-d-Q. 67).

(*d*) *By the use of the word "Goodyear's," as the most prominent word on the return envelopes.*

The return envelopes of the defendant company, which were placed in all the letters sent out by them, also had the word "Goodyear" more prominent than any other word in the title (see return envelopes of 1868, printed on pages 99 and 100, R.), thus:

# GOODYEAR'S

## India Rubber Glove M'f'g Co.,

MANUFACTURERS AND DEALERS IN ALL KINDS OF

# INDIA RUBBER GOODS,

This system of sending return envelopes in the form above stated continued from the year 1868 until long after the corporation of the complainant. *Hence the public and the trade were naturally led to regard the word* "GOODYEAR" *as the* ESSENTIAL *and prominent part of the title of the defendants*, and this accounts for the vast number of letters and orders received by them under the abbreviated title mentioned.

(*e*) *By the signature of their name by abbreviated titles containing always the words "Goodyear" and "Company," and almost always the letters "I. R."*

See evidence above.

(*f*) *By the prosecution of another concern who adopted a similar abbreviated sign.*

It appears, from the evidence of the complainant (rebuttal evidence, page 155, R., Complainant's Exhibit No. 46), that as early as the year 1867 the defendants made formal claim to be the exclusive owners of the abbreviated titles now in controversy, and prose-

cuted persons named Moore and Thompson for erecting signs with a similar abbreviated title. The complaint in said suit, which is offered in evidence by the complainant, shows that four years before the organization of their company the defendants had established and claimed the name to deprive them of which this suit is brought.

That complaint alleges (see exhibit separately, printed, pp. 6–7):

"And plaintiffs state that said store last mentioned, and the " business and management thereof, had become well known and " identified to persons purchasing, dealing in, or requiring for their " own use such goods as there offered for sale; not only by said " full corporate name of said corporation plaintiff, but also by con- " venient abbreviation thereof, such as 'Goodyear's India Rubber " Store,' '*Goodyear's India Rubber Co.*,' 'Goodyear & Co.,' insomuch " that many letters containing orders and remittances relating to the " business of said store, No. 417 North Fourth street, and intended " for said plaintiffs having charge thereof, have been received by said " plaintiffs from time to time, and up to the present time, as well " from old as new customers in said City of St. Louis *and elsewhere*, " addressed to '*Goodyear Rubber Co.*,' '*Goodyear Rubber Goods Co.*,' " '*Goodyear Manufacturing Co.*,' '*Goodyear Glove Co.*,' '*Goodyear* " *& Co.*,' or 'Messrs. Goodyear,' and 'Mr. Goodyear,' respectively."

The injunction prayed for in this suit was against the use by the defendants therein of the mere words "Goodyear's Rubber Goods," and was of course not allowed, but this exhibit is of great importance for three purposes:

(1) It proves the *assertion as early as 1867 of the defendant's property right in the abbreviated title* (a number of variations being given).

(2) It conclusively establishes the fact of the use of such abbreviated titles *long prior to the plaintiffs' organization.*

(3) It shows that the recognition of the defendants by its abbreviated title was not confined to New York, but existed also in regard to its western branches. The proof, therefore, of the 4,200 instances of use in New York and Naugatuck could, therefore, probably be multiplied many times.

## THIRD POINT.

**The Complainant is not entitled to any relief because it has not done equity, but has been guilty of unfair practices.**

(*a*) It is claimed in the bill of complaint that the complainant was organized November 20, 1872, and commenced business in New York January 1, 1873 (see p. 1, R.). It appears, however, from the cross-examination of Mr. Shepard, president of the complainant company, that business was not actually commenced by the complainant under its present title until about May, 1873 (see Shepard's cross-examination, Qs. 114–5–7, p. 18, Add. Rec., and Qs. 123 to 145, pp. 18–19, Add. Rec.).

It is claimed by the defendants in their answer that the complainants cannot maintain their present suit in equity, because they have *not done equity* and *do not come into Court with clean hands*, and it is further claimed in the cross-bill that the complainants adopted their present title for the purpose of obtaining the good-will and trade of the defendant company by the use of that title.

That the complainant intended an *unfair competition in trade* and to secure the benefits of the recognized abbreviated title of the defendants is evident from the following fact: That the principal managers of the complainant company had been in the same business in the City of New York under the name of the Rubber Clothing Company for a number of years prior to 1873 (see Shepard's cross-examination, p. 17, Add. Rec., x-Qs. 94–5). The "Goodyear Rubber Co." has continued to do business in the same store as the Rubber Clothing Co. up to the present time (x-Qs. 85 and 88, p. 16, Add. Rec., and re-cross 22, pp. 39, Add. Rec.). It deals in the same kind of goods as the Rubber Clothing Co. (Complts.' Record, p. 69, Add. Rec., Re-d. Qs. 63 to 65).

The Rubber Clothing Co. sold its interest in the branch stores at St. Louis, San Francisco and Chicago to the Goodyear Rubber Co. in the year 1873, the managers in the City of New York still continuing substantially the same (see p. 23, Add. Rec., x-Qs. 187 to 191).

For several years after the organization of the complainant they kept no separate bank account from the Rubber Clothing Co.

(Shepard's cross-Q. 93, p. 16, Add. Rec., and cross-Qs. 192–200, 23, Add. Rec.).

It is, of course, claimed by the complaintan that the Goodyear Rubber Company was an entirely different concern from the Rubber Clothing Company; the identity of the managers and of the places of business is clearly shown, while the refusal of Mr. Shepard to produce the stock subscription paper of the complainant (x-Q. 271, p. 31, Add. Rec.), or the instruments of transfer of property from one company to the other (x-Q. 272, p. 31, Add. Rec.), shows that the "transfer of property" was only a legal form of changing the name. Mr. Vermilye, the assistant secretary, is *unable to say which company employed him* in 1873 (p. 60, Add. Rec., x-Qs. 87 to 99), and *refuses to tell* which company paid him (p. 66, Add. Rec., Re-x-Q. 33). Evidently there was something underhanded in this change of name. Mr. Shepard is also rather shy in regard to giving any reason why he and the other managers of the Rubber Clothing Company chose the title "Goodyear Rubber Company," rather than any other (see x-Qs. 146–149, p. 20, Add. Rec., and x-Qs. 170, 172, p. 22, Add. Rec.).

He says this title was "as good as any other we could think of."

"We proposed to do a more general business than we had at any "time done before, and thought that the name under which we had "done some of this business at those Western places seemed to limit "the business to a particular line of goods, so we were considering "choosing a name more general in its character."

He does not remember that any one suggested Goodyear Rubber Company during these discussions (x-Q. 173, p. 22, Add. Rec).

*After an adjournment* he pretends it was to "*please Mr. Goodyear*" (p. 35, Add. Rec., Re-d. Q. 11), and that the "Goodyear Rubber Company" "*owned* licenses to manufacture goods under patents granted to Charles Goodyear, Jr." (*Id.*), but on cross-examination he cannot give any definite information about these licenses (pp. 41–42, Add. Rec., Re-x. 41 to 68, and especially 63), and they were made to him *personally, and not to the company* (x-Q. 58). Complainant's counsel refuses to produce the licenses (p. 41, R-x-Q. 43, Add Rec.). This "reason" for adopting the name is thus shown to be a mere subterfuge.

It is well known that the patents of Goodyear upon rubber goods of the kind manufactured and sold by these parties *expired before the year 1873.*

The advantage of a name, such as "Goodyear Rubber Com-

pany," and the general use of a similar abbreviated title by the defendant company, was well known to the incorporators of the complainant, and we have shown above that they addressed the defendant by similar titles (see *ante*, pages 11, 12).

Shepard admits that at this time he knew that all the words used in the complainant's present title had been used in the name of the defendants (x-Q. 217, p. 25, Add. Rec.), and that the name of complainant company was a combination of the words used in the name of the defendant (x-Q. 219, p. 25, Add. Rec.), and that the defendant had been *to some extent*, at least, addressed by the very title assumed by the complainant (x-Qs. 80 to 83, p. 43, Add. Rec.).

It is certainly open to suggestion that the real reason for adopting the name chosen was to obtain the benefit of the defendant's reputation, especially in view of the fact that Shepard had previously made an unsuccessful effort to have the two concerns consolidated, for

(*b*) Mr. Vermeule says that "a few months previous to their "putting up the signs 'Goodyear Rubber Co.' Mr. Shepard made a "written proposition to consolidate the New York ends of the two "concerns, that of the Rubber Clothing Co. and that of the Good-"year India Rubber Glove Co.; after consideration we declined. "Mr. Shepard asked if we had any proposition to make to bring "about the consolidation of the two concerns. We told him we "had not. He then took the paper and left" (p. 50, R., Q. 37).

Mr. Allerton first had such conversation with Mr. Shepard, and then Shepard came to Vermeule with the written paper (Vermeule's Ev., pp. 58, 59, R., x-Qs. 121 to 124 and 131).

Mr. Shepard states that he has no recollection of a conversation on this subject with Mr. Vermeule, but "I might have had" (p. 13, Add. Rec., x-Q. 45). He admits, however, that there was some conversation with Mr. Allerton upon this subject, Mr. Allerton being then the president of the defendant company (x-Qs. 45 to 48, pp. 13, 14, Add. Rec.). This proves conclusively that the complainant was aware of the advantages that would be derived from the use of the defendant's name, and shows the reason for their adopting their new title, Goodyear Rubber Company.

From five to six weeks after this conversation the complainant company put out upon the stores of the Rubber Clothing Company the title "Goodyear Rubber Company" (p. 59, R., x-Qs. 128, 129).

(*c*) *The protest of the defendants against the adoption of the complainant's present title.*

Mr. Vermeule testifies that after the conversation in which Mr. Shepard suggested the consolidation of the Rubber Clothing Co. with the defendants, shortly after the sign was put up, he saw Mr. Shepard and expressed his surprise "that he should have used their "name in that way. Mr. Shepard replied that we had forced him "to do it by refusing to entertain any proposition for consolidating "the two concerns. I remarked that on that theory he would be "justified in forcing his way into our safe if we refused to give him "the contents."

A letter was also written by the defendants to the complainants, a copy of which is identified by Mr. Shepard (x-Q. 182, p. 23, Add. Rec., and x-Q. 269, p. 31, Add. Rec.). This letter is printed upon page 31, Add. Rec., and is as follows:

MAY 7, 3.

"THE RUBBER CLOTHING CO.,
"366 Broadway, N. Y.:

"GENT'M—We have been long known and understood by people "generally to be the Goodyear's Rubber Company, and we must "protest against your adoption of that name at this late day as tend- "ing to deceive the public and injuring us in our business. We "have to request that you cease styling yourself The Goodyear "Rubber Company, and return to your true name. We sincerely "trust you will at once see the propriety of this course.

"Yours, etc.,
"(Signed,) GEORGE M. ALLERTON,
"Prest. Goodyear's India Rubber Glove Mfg. Co."

Mr. Shepard admits the receipt of this letter some time in 1873 (p. 23, Add. Rec., x-Qs. 184–5–6); but before a copy was shown to him he tried to maintain that "*it was not a protest*" (x-Q. 267, p. 30, Add. Rec.). *This shows how far his testimony is to be trusted.* We invite the attention of the Court to this and to his whole testimony as full of indications of disingenuousness.

(*d*) *The interference of the complainant with the defendant's business by the use of this name.*

The identity of the name "Goodyear Rubber Company" with the abbreviated titles long used by the defendant and recognized by the public is substantially admitted by the complainant.

The complaint sets forth that the title "GOODYEAR'S INDIA RUBBER GLOVE MANUFACTURING CO." is "for practical purposes almost "identical with the plaintiff's" (p. 4, R.), and that "Goodyear's Rubber Manufacturing Co." is "substantially identical with the plaintiff's" (p. 5, R.).

Previous to the organization of the complainant under the title assumed in 1872 there was "no confusion in the Post-office about letters" (Vermeule, p. 56, T. R., x-Q. 96).

But as soon as the complainant had commenced business in this new name, which was about May, 1873, great confusion *at once arose.*

Mr. Vermeule testifies (p. 51, R., Qs. 42, 43) as follows:

"Q. Have you found, during the years since the complainants "have used the title 'Goodyear Rubber Company,' any embarrass- "ment in the business of the defendant by reason of the adoption "of that name, and, if so, give instances?

"A. Yes; through the mails instances occurred daily, where "they got our letters and appropriated their contents by filling or- "ders which were intended for us. There was one instance, The "Jackson & Woodin Manufacturing Company, whose order they "filled—it was plainly addressed to 'Goodyear Glove Company.' "In another instance they filled an order sent to us by telegram by "one of our own travelers, signed by him; and there are a number "of other instances which I can't state here, but can produce them "if necessary.

"43 Q. Were the orders, letters and telegrams referred to in "your last answer, which the complainant company received and "appropriated, although intended for your company, ever returned "to you by them?

"A. The telegram was returned after we threatened to sue them if "they did not deliver it to us—the letter from the Jackson & Woodin "Manufacturing Company they refused to return. There were many "other letters returned to us after they opened them, but as a rule "they omitted to return the envelopes in which the letters were re- "ceived. Many of the letters containing checks or drafts they re- "turned to the senders after opening them, thereby keeping us out "of the funds from three to ten days, according to the distance of "the residences of the senders were.

"44 Q. Of what date was this Jackson & Woodin letter?

" I am not sure whether it was 1878 or 1879; it was midwinter " of one of those years.

" I wish further to state that that letter is or was in the posses- " sion of Mr. Shephard. I called upon him at the time, and he " showed me the letter filed away, and declined to return it, as he " didn't wish to spoil his file. I saw it was addressed to ' Goodyear " I. R. Glove Company.' "

Mr. Vermeule also relates another recent instance on page 59, R. (x-Qs. 135–9).

See Exhibit Gillett Letter, p. 97, R.

Mr. Van Vliet, the cashier of the defendants, also testifies as follows (p. 73, 74, R.):

" 7 Q. Do you know whether any of the letters, checks or orders " addressed or drawn to the defendant company, under any of the " titles detailed by you, were received by any other person or corpo- " ration; if so, state who it was, and what was done with such let- " ters, checks and orders, and when such things occurred?

" A. Since November 1st, 1872, there have been a number of our " orders and letters, with checks, delivered to the Rubber Clothing " Company, and checks returned oftentimes to the sender, and the " orders, in many cases, filled by them.

" 8 Q. When did such things occur—since 1872?

" A. Since they adopted the name of Goodyear Rubber Com- " pany.

" 9 Q. Has that occurred every year since then?

" A. I think it has.

" 10 Q. Have you any evidence to show that the Rubber Cloth- " ing Company has received and filled orders intended for the de- " fendant company; if so, please produce it?

" A. Yes, sir; here are two letters of A. E. Lucas, dated Septem- " ber 15th and September 31st, 1883, showing that an order intended " for us was filled by the Rubber Company. This was for rubber " boots.

" Two letters of Walde, Diehl & Co., dated October 26th and " 27th, 1883, showing that an order intended for us was filled by the " Rubber Clothing Company. This was for two dozen No. 2 rubber " spittoons and two No. 5 mats.

" Letter containing order of C. T. Bodifield & Company, in reply " to a letter of ours of November 1st, 1882. This order was for " rubber carpeting.

" Here is a letter of John Gauche's Sons, August 3d, 1883, " stating that the last order intended for us was filled by the Good- " year Rubber Company.

" D. J. Cushman letter, dated August 3, 1883, an order intended " for us, he there states, was filled by the Rubber Clothing Com- " pany.

" 11 Q. Do these instances of the filling of orders by the com- " plainant company, intended for the defendant company, during " the year last past, fairly represent the amount of orders that have " been, in like manner, filled by them during each of the preceding " years since 1872 ?

" A. These orders for 1883 are a fair percentage for the preced- " ing years.

" 12 Q. Do you know that of your own knowledge ?

" A. Yes, sir.

" 13 Q. How does it happen that you produce documentary evi- " dence of orders filled only during the past year ?

" A. We have only produced a portion of this year. We have " only commenced for a short time to save the letters in which the " parties have notified us that their orders were filled by the Rub- " ber Clothing Company.

" 14 Q. Can you produce evidence that checks intended for the " defendant company were received by the complainant company ?

" A. I can."

A large number of examples of the receipt by the complainant of money or checks intended for the defendant are then produced (see R. pages 77 and 78).

" 15 Q. Can you state, of your own knowledge, whether the in- " stances in which the complainant company has received checks in- " tended for the defendant company, and returned them to the cor- " respondents, have been as numerous during each of the years " since 1872 as they were during the year 1883 ?

" A. I think they were."

Mr. Vermilye, the assistant secretary of the complainant, admits the receipt of " a good many letters and documents " intended for the defendants (p. 46, Add. Rec., Qs. 9 to 12), and that this has been the case " to a greater or less extent," *ever since the organization of the Goodyear Rubber Co.* (p. 54, Add. Rec., x-Q. 17).

Of course, it has occurred that the defendants have received letters intended for the complainant, and this is one of the subjects of the complaint; but it is admitted by Mr. Vermilye, the assistant

secretary of the complainant, that the instances of this character have been very few (see p. 55, Add. Rec., x-Q. 28), and subsequent cross-examination, in which the witness is obliged to admit that the knowledge of the receipt by it of letters intended for the complainant was chiefly hearsay (x-Q. 34-45, 55-56, Add. Rec.).

This confusion became so great that Judge Kellogg, former president of the defendant company, was obliged to have an order from Postmaster James to remedy the difficulty.

He says (pp. 65-66, R., Q. 11):

"After the Goodyear Rubber Company's sign was put up at "their Goodyear Rubber Company's stores, in 1873, and "some considerable time after they began to do business as "the Goodyear Rubber Company, we began to have trouble "and confusion in regard to our correspondence. We had never "had any before. This confusion increased so much, letters going "to the Goodyear Rubber Company that were intended for us, that "I came to New York upon the request of Mr. Allerton, the presi- "dent, and went with him to see Postmaster James about it. He "made an order to remedy the difficulty as far as he possibly could "at the post-office. It did relieve the trouble to some extent, but "the confusion afterwards continued and increased so much that I "went to Postmaster Pearson to procure an order for the same pur- "pose. All we asked was extreme care in giving to the complainant "what belonged to their company, and giving to the defendant what "belonged to theirs." I believe Mr. Pearson made an order to that "effect, or said he would."

This order of the Post-office is referred to also by Mr. Shepard (Qs. 55-6, pp. 7-8, Add. Rec.), and is printed as Exhibits Nos. 12 and 13 (pp. 187-188, Add. Rec.).

In addition to the use of a name closely imitating the name in common use as an abbreviated designation of defendant's full title, the complainant for a number of years has been accustomed to make representations tending to mislead the public into the belief that the complainant company is the same as the defendant.

*(f) By the representations on their signs and bill-heads that they have factories in Naugatuck, Connecticut.*

The defendant company *has always had its factories at* NAUGATUCK, CONN. (see Vermeule's ev., p. 44, R., Q. 10, and Articles of

Incorporation of 1847, Add. Rec., p. 73; of 1867, p. 104, R.; and of 1873, p. 101, R.).

The reputation of defendant's goods was inseparably connected with these factories.

For some years it has placed the words "NAUGATUCK, CONN.," upon its bill-heads in the following form:

FACTORIES—NAUGATUCK, CONN.

See Exhibition Illustration of *Bill-heads*, dated Dec. 21, 1874, printed on p. 96, R., and *Return Envelopes*, p. 99, R., and see Evidence of Vermeule, p. 44, R., Q. 10.

The complainant company in *imitation* of the defendant's bill-heads placed upon its bill-heads the words "Factories Naugatuck, Conn.," and has done so for a number of years past (Vermeule's Evidence, p. 49, R., Qs. 27–8, and see Defendant's Exhibit Bill-head and Order Sheet, printed on pp. 93, R., and 94, R.).

It is true that these words on the defendant's bill-heads are placed under the words "Rubber Clothing Co."; but the title "Goodyear Rubber Co." is quite as conspicuously placed, and the ordinary purchaser would inevitably conclude that the factories of both companies are at Naugatuck.

In addition to this, complainant has long used upon a large and conspicuous public sign, painted upon the branch store in St. Louis the words, "FACTORIES NAUGATUCK, CONN." (see Exhibit St. Louis Sign, and also Testimony of Lewis M. Allerton, Deft.'s Record, p. 86, 87, R., and also Vermeule's Evidence, p. 49, R., Q. 30). The same representation was made upon their sign at No. 363 Broadway, corner of Franklin street, in this city (see Vermeule, p. 49, R., Q. 29).

This statement is *totally false*, and appears to be a willful misrepresentation for the purpose of misleading the public, and taking advantage of the well-known fact that for thirty years the defendant's goods had been made there.

The complainant endeavors to explain it by saying that they did have a factory in Naugatuck, but it appears that the only excuse for this statement is that Mr. Shepard, the president of the complainant, *personally* rented a factory building in that town, which was

*never used.* He never made an assignment of the lease to the complainant under either of its titles (p. 136, Re-x-Q. 2).

Sheppard admitted that it had no factory at Naugatuck (Add., p. 32, x-Qs. 281–303).

But when confronted with proof of his fraudulent signs and bill-heads, he says, *as one of his many afterthoughts:*

"It was *intended* to commence making goods there at once by the *Goodyear Rubber Co.* and by the Rubber Clothing Company."

Page 137, R., Re-x-Q. 17.

This shows that the position of the words: "Factories, Naugatuck, Conn.," under the title Rubber Clothing Co. in the bill-heads of the complainant was not intended to confine the factory to that company.

This excuse for the false representation is as flimsy as the other pretenses of fair dealing.

The factory not only was not in possession of the complainant, but it was actually *sublet to Mr. Allerton, the president of the defendant,* and he occupied it *during the whole period of Shepard's pretended occupation.*

Shepard's Ev., pp. 137–138, Re-x-Qs. 22, 23.

Shepard pretends that Mr. Allerton was his *agent* to take care of the property (p. 135, R., Q. 12), and that he "paid him for his services" (Q. 13, p. 135, R.). But he is obliged to admit that no money was ever paid Mr. Allerton; "it was a convenience to him *and his company,* that was understood to be the compensation" (p. 137, R., Re-x-Q. 21).

The defendant, therefore, was in occupation of this factory during the whole period while the complainant was fraudulently claiming to have "factories in Naugatuck, Conn."

The factory was *never used* by the complainant and *no goods* were ever manufactured in it (see evidence of Louis M. Allerton, p. 86, R.; and also the admissions of Mr. Shepard upon page 43, Add. Rec., re-cross 74–77, and rebuttal evidence, p. 136, R., Re-x-Qs. 6, 7; see also Vermeule's evidence, x-Qs. 151–3, pp. 60–61, T. R.).

Judge KELLOGG also says: "I think I have known all about the "rubber factories of Naugatuck for the last thirty years. The com-"plainant never had a factory at Naugatuck to my knowledge. I "am sure they never manufactured any goods there" (p. 65, R., Q. 7).

The complainant goes so far as to deny in its answer to the cross-bill (p. 41, fol. 89), "that it ever at any time or in any "manner or form, represented to the public that it had factories at "Naugatuck in the State of Connecticut, as alleged by the defend-"ant."

This denial is a good specimen of the allegations of the complainant; and the positive proof presented by the Exhibit Bill-head and Order Sheet, and by the photograph of the St. Louis store show the amount of reliance that can be placed upon them.

The claim of the complainants that they had a factory for manufacture of their goods at Middletown, Conn., is also a sham. It was only a temporary lease of a factory for boots and shoes (Shepard's Ev., p. 18, Add. Rec.). The Goodyear Rubber Co. in Connecticut was a mere paper organization; it did not comply with the law, and their charter privileges were repealed by act of the Legislature, March, 1880 (Kellogg's Ev., p. 68, R.). Pub. Acts of Conn., 1880, pp. 566, 582, ——. The preamble of the act annulling the corporate existence of the plaintiff company in Connecticut is as follows: "Whereas, the corporations hereafter named in this act, which have been organized under the joint stock laws of this State, have violated said laws by failing to make annual returns, and to do other acts required of them by said laws, and have ceased to exercise their corporate powers," &c.

(*g*) *By the use of the words "Broadway, corner of Broome street."*

It appears that the defendants had long occupied a store on Broadway, corner of Broome street (see Vermeule's Ev., pp. 49–50 R., Q. 33), viz., from 1876 to 1881, and had to some extent acquired a good-will in that locality, and that they had, during these years, placed on all their bill-heads, order sheets and their printed papers the words,

**"BROADWAY Cor. BROOME ST."**

See Vermeule's Ev., Q. 35, p. 50, R.; Van Vliet, pp. 91, 92, R., Qs. 3, 4, 5; and Exhibit, p. 111, R.

In 1881 they were compelled to move from that position, and, strangely enough, the complainant company at that time moved into the building diagonally opposite, and commenced to put upon their bill-head the words "Broadway, cor. Broome St."

The choice of location at the corner of Broadway and Broome street shows that the complainants were anxious to take advantage of the reputation and "good-will" acquired by the defendants; and the use of the words "*Broadway, corner of Broome street,*" upon the sign on their building (Vermeule's Ev., p. 50, T. R., Q. 36), and the printing of these words prominently upon all their bill-heads and letter-heads shows that they were willing to imitate the defendant's custom in this respect also.

The desire to imitate is shown *even in the form of words* used, instead of the more usual form "Corner of Broadway and Broome Street."

The intention to gather in the defendants' customers, by the familiar words, for years associated with the defendants, is still more clearly shown by the placing of those words conspicuously *on the outside of their store.* They were unnecessary as a guide to the streets, for the customers *who saw the sign must have already found the streets;* and they could have had no use but to notify the public, "We are the Rubber Company whom you have long associated with the Broadway corner of Broome street."

Thus we see that the complainant in their bill and letter-heads and on the signs copied three of the prominent features of the defendants' bill-heads and signs, viz., the words, "GOODYEAR," "RUBBER" and "COMPANY"; the words, "FACTORIES, NAUGATUCK, CONN."; and the words, "BROADWAY, CORNER OF BROOME STREET."

There is also evidence that the complainants' clerks represented to customers that it was *the same company as defendant company.*

Mr. Stephenson, who was at one time employed by the defendant, testifies that while he was with them two instances occurred in which customers of the defendant informed him that they had gone to the complainant by mistake, and had been told there *that the complainant company was the same house as the defendant* company (see p. 101, Defendants' Record).

See also Vermeule's Ev., p. 55, T. R., x-Q. 79.

## FOURTH POINT.

**Te defendant and not the complainant is entitled to any relief that can be given.**

*The series of efforts made to protect its own identity and to protect their well-known abbreviated names by the defendant, and to assert that it (and not complainant) was the original company known by the generic name, which the plaintiff unfairly adopted, has with unparalleled audacity been made the subject of the plaintiff's claim.*

We have shown that the Rubber Clothing Company, or the managers of that company, organized the complainant under the name of the Goodyear Rubber Company in November, 1872. It is claimed that the complainant commenced business in January, 1873 (see bill of complaint, p. 2, R.), but from the cross-examination of Mr. Shepard (p. 18, Add. Rec., x-Qs. 114–117, and p. 19, Add. Rec., x-Q. 133, and p. 20, Add. Rec., x-Qs. 140–145), it appears that the business was not started before May, 1873.

In *March*, 1873 (*several months*, therefore, before the complainant *commenced* business), the defendants took the first step toward protecting the abbreviated names, by which the public had long known them by, *organizing and incorporating the* "GOODYEAR RUBBER MANUFACTURING COMPANY." This was done for the purpose of protecting the name (see answer, p. 23, R.)

They also at once put a sign on their place of business in New York with the *same name.*

The defendant also formally protested against the adoption of the name "Goodyear's Rubber Company" in the letter of May 7, 1873, printed on page 31 (Add. Rec.)

In the circular of 1873, sent to every customer (pp. 52, and 95), they warned the public against confounding them with the *new concern* (p. 95).

This circular incidentally proves that confusion had *already arisen,* and hence that defendant was recognized and called *by the generic name.*

In 1875 they mailed to all their customers a notice claiming that *they* were the *original* "GOODYEAR COMPANY," and warning against plaintiff.

In 1882 they incorporated under the name of "GOODYEAR RUBBER MANUFACTURING CO. in Connecticut.

In 1875 to 1882 their bill heads, return envelopes and signs all bore both corporate names, thereby indicating in the plainest manner that they claimed recognition under both names.

They also seriously contemplated commencing suit against the complainant, and received the opinion of counsel that they had a good case (Vermeule, p. 51, R., Q. 41).

Upon this subject Judge KELLOGG says (p. 64, R.):

"6 Q. After the organization of the complainant company, was "there a discussion and advice of counsel taken in regard to prose- "cuting them for the use of the name 'Goodyear Rubber Com- "pany;' if so, please state the circumstances and the result?

"A. There were several discussions and consultations on that "subject. I do not think at any regular directors' meeting the mat- "ter was brought up when I was present, but there were informal "discussions among the directors in 1873 and 1874, and later; and "I was consulted by the president of the company, as counsel, and "asked for my opinion. I gave him my opinion verbally, at differ- "ent times, that an injunction would lie against the complainant. "The reasons why a suit was not brought were, as I remember, that "Mr. Vermeule was opposed to a lawsuit; that the Rubber Cloth- "ing Company was a valuable customer of our company, especially "in the matter of dress shields, which we manufactured, and Mr. "Allerton, as he claimed, and Mr. Shepard were about as good per- "sonal friends as rivals in the same kind of business can be."

The plaintiff seeks to torture these successive acts into indications that the defendant, as years went on, made claims to recognition under a different title to that by which it was at first known; but they only prove that as the plaintiff's business became more and more competitive and confusing, they insisted upon their right to the generic name with more and more persistence.

This was done "for the natural reason that Mr. Shepard was "pressing us to the wall by misleading our customers, and we felt "that we *must emphasize the fact more and more, in order to hold our "trade*" (Q. 47, p. 52, R).

Hence all the acts complained of by the "Goodyear Rubber Company" were done by the defendants for the purpose of protecting their own rights.

The foregoing facts, we submit, fully establish that the complainant has no right to the relief demanded.

We also submit that the complainant having made use of the name "Goodyear Rubber Company," which they knew was one of the abbreviated titles applied by the public to the defendant; and having used the words, "Factories, Naugatuck, Conn.," in imitation of the defendants' bill-heads and signs, when they well knew that they had no such factories; and having taken advantage of the good will of the defendants in the location and title, "Broadway corner of Broome street," and having done these acts notwithstanding the verbal and written protests of the defendants, and on account of the refusal of the defendant company to consolidate with the Rubber Clothing Company, the predecessor of the complainant, they must be held guilty of *unfair and unlawful trading against the defendants*, and an injunction should issue against them.

If the Court should hold, as we think it must, that the defendant had acquired, by usage, recognition under a name which abbreviated its full corporate name by the omission of the words which indicated a limitation of its business; and should also hold that such name was either capable of exclusive appropriation in itself, or that the conduct of the plaintiff was such as to indicate an original intention in adopting their name to deceive the public into believing that they were the defendant corporation, and thereby appropriated part of its business, then the defendant is entitled to relief.

The Court below, on this point, said (fols. 257, 260):

"There is no reason why a corporation may not acquire a prop-
"erty right to the use of another name as a trade-mark or as
"incidental to the good-will of a business as well as an individual,
"and, if it has acquired such a right, it will, of course, be protected
"in its enjoyment to the same extent as an individual would be. It
"cannot be deprived of the right by the assumption of the name
"subsequently by another corporation, and it is immaterial whether
"the latter selects its name by the act of corporators who organize
"under the general laws of the State or whether the name is selected
"for it in a special act by the legislative body."

* * * * * * * *

"If the proofs warranted the inference that the complainant
"assumed a name by which the defendant was known for the pur-
"pose of deceiving the public and of supplanting the defendant in

" the good-will of its business, the courts would not only refuse to " assist the complainant, but would intervene to protect the de- " fendant."

See also

*Penny* Bell's Life Case, 5 Jur. N. S., 592.
Police ~~Pontica~~ Gazette Case, 2 Abb. Pr., N. S., 459.
American "*Grocer*" Case, 25 Hun, 398.

Morawetz on Private Corporations says (p. 180) :

" It seems that a corporation can acquire a new name by usage " or reputation."

Again, on page 181 :

" A misnomer of a corporation has the same legal effect as the misnomer of an individual. A contract entered into by a corporation under an assumed name may be enforced by either of the parties."

Potter on Corporations (Sec. 12, note) :

" A corporation may be known by several names." " A corporate " name may be *acquired by usage*."

" When the corporate name consists of several material words, " the transportation or omission of some of them, or an interpolation, " is not a material variance, so long as there is no doubt as to the " body intended to be designated."

(Note 15.) " So a corporation may be known by several names, " as well as a natural person, and will be bound by obligations of " any sort assumed by its adopted name, as that of a firm or an " agent."

See also *Conro vs. Port Henry Iron Co.*, 12 Barb., 27.
Abbott's Dig., Law of Corporations, p. 538.
*All Saints Church vs. Leavitt*, 1 Wall., 191.
*Ducthess Cotton Mfg. Co.*, 14 John, 238.
*Dutch West. Ind. Co. vs. Moses*, 1 Stra., 614.
*Knight vs. Mayor of Wells*, 1 Ld. Ray., 80.
*Mincot vs. Curtis*, 7 Mass., 441.
*South Dis. vs. Blakeslee*, 13 Conn., 227.

## FIFTH POINT.

**There are some errors in the opinion of the Court below so manifest as to call for special attention.**

1. The Court below would seem to have been a little uncertain in writing its opinion as to the party in whose favor the decision was to be rendered.

The first part of the opinion seems to have been written with the intention of adjudging the right to be in the defendants, for it proceeds to discuss the question whether a corporation may not acquire by usage a right to a name which is not its own, and become entitled to protection of such acquired name as against a subsequently organized corporation.

Down to and including the following sentence,

" It cannot be deprived of the right by the assumption of the " name subsequently by another corporation, and it is immaterial " whether the latter selects its name by the act of corporators who " organize under the general laws of a State or whether the name is " selected for it in a special act by the legislative body."

it would seem plain that the Court had intended to decide in defendant's favor, for if it was satisfied, as it subsequently stated, that the defendant never had used but had always avoided and protested against any abbreviated name, discussion of the legal proposition that it could have had such a right if something had been proved that was not proved was clearly immaterial.

2. The opinion then proceeds to discuss the proofs as to the extent to which the defendant had been known by its abbreviated name. (I say *name* in the singular, because all of the abbreviations are substantially the same, having the same generic characteristic, and the same absence of express limitation to a special branch of business.)

In this part of the opinion the Court clearly mistakes the proof.

It speaks of the letters addressed to the defendant prior to the organization of the complainant by the abbreviated names as having been only of a comparatively small number, " *averaging* not over five hundred a year."

It is difficult to see the importance or significance to be derived from ascertaining what the number of letters so addressed " *averaged* " when considering long series of years.

Of course the numbers grew with the growth of the business and with the encouragement of the practice.

As already seen, in the year 1872 (the complainant commenced business in May, 1873), the defendant has produced 1,243 letters addressed to it in that year under its abbreviated title (the variations being immaterial), and has produced 4,326 letters received during

the five years prior to the commencement of the complainant's business, and it was proved without contradiction that the same substantial abbreviation which the complainant imitated was used by correspondents in " a majority of instances " where the correspondents did not use return envelopes, and which return envelopes themselves stimulated the practice by printing the limiting words of the defendant's title in smaller letters.

The Court below simply did not fully appreciate the proofs, and belittled them in its mode of statement by the wholly immaterial suggestion that the use of the abbreviated titles did not *average* 500 a year. This was only true by cutting down the large numbers of the later years by the smaller number of the earlier years.

3. The suggestion that immediately follows that the abbreviated names " embraced upwards of seventy varieties " is also wholly immaterial.

All of the so-called seventy varieties were *immaterial variations.* Their generic nature was the same, and practically the same as the plaintiff's assumed title.

It is difficult to see how a company who, on the finding of the Court itself, had been addressed, on an average, for a series of years, in five hundred instances by its customers by a name substantially similar to the complainants' name, could, on the subsequent incorporation of the plaintiff, under such a name, be restrained by injunction from holding itself out to just those very customers or to the rest of the public as a concern which had been known and addressed under such abbreviated name and was entitled to continue to be so known and addressed.

4. The opinion further states :

" It *is not claimed* that the *officers* or *agents* of the defendants " were accustomed, during any part of this period, to use any other " than its corporate name, or assumed the right to do so until after " the complainant commenced business."

This is error.

Of course, in formal business transactions, where its name was to be signed in a formal way, the company naturally used its full corporate name.

But in less formal matters it certainly did use the abbreviated name which its customers had conferred upon it by usage ; as, for instance,

(*a*) By taking a Government license under such abbreviated name.

(*b*) By signing receipts under such abbreviated name.

(*c*) By filling orders addressed to it both in writing and in print under such abbreviated name.

5. The Court further went on to say:

"Concisely stated, the question would seem to be whether the "defendant can appropriate to itself the various misnomers applied "to it by the carelessness or inaccuracy of a comparatively small "number of its customers during a period of ten or eleven years, "notwithstanding the zealous and active measures of its managers "to repress the practice and their success in preventing it from "ripening into general usage."

"It would hardly be contended that an individual could found a "claim of possessory right to any species of property upon the un-"authorized conduct of other persons, or maintain that he has "adopted a name symbolizing his products or identifying his per-"sonality with the business by protesting against its use."

This, too, is error.

It does not state either the facts proved or the law applicable to such facts.

We know of no reason why valuable property right in a name may not be acquired by usage, even though such usage may be due to the carelessness or ignorance of the public.

Indeed, *the Judge himself so held* in the first part of his opinion, in stating that a corporation may acquire a right to be known by a new or additional name by usage, and, if so, such usage must have at least originated through carelessness or inattention, and it cannot be doubted but that a corporation or an individual may acquire a most important and valuable designation simply by the habitual carelessness or tendency to abbreviate its name on the part of others.

Thus, The New York, West Shore and Buffalo Railroad Company is familiarly and popularly, *though erroneously* styled, The "West Shore Railroad," and The New York, Lake Erie and Western Railroad, is familiarly and popularly, though erroneously styled, The "Erie Railroad." The name of the predecessor of this corporation was the "Erie Railway," which perhaps originated and now familiarizes the present error.

Doubtless neither of those corporations ever used its abbreviated

name in any formal business transaction, but it encourages the practice and induces the usage *by printing those parts of its name* on its signs in *larger type* and letters.

*This is precisely what the defendant company did for years before the complainant company was organized.*

Its signs and return envelopes all tended to induce and render natural the use of the popular and abbreviated name by which it was addressed in the year before the complainant's organization in more than 1,200 instances.

6. Again, the opinion in discussing what the Court thought was the absence of proof of intention to interfere on the part of complainant, said:

"The case is destitute of evidence to indicate that the com-
" plainant's corporators were aware or had reason to suppose that
" the defendant had become known to any extent by any other
" name than its corporate name. So far as appears they had no
" knowledge that defendant's customers ever addressed it by other
" names."

The proofs were otherwise:

Vermilye, assistant secretary of the complainant, was asked (Add. R., p. 58):

" 65 x-Q. Did you ever know of their (defendants' corporation)
" being known or addressed as the Goodyear I. R. G. Co.?

" A. Yes, sir.

" 66 x-Q. How long have you known of their being known and
" addressed by that title in this way?

" A. Well, they have been addressed by that as long as I have
" known them.

" 67 x-Q. For twenty years?

" A. Yes, sir; but generally spoken of as The Glove Company.

" 68 x-Q. Those other abbreviations in which the only full word
" used was the word 'Goodyear,' and all the rest of the words were
" abbreviated; was that used quite frequently?

" A. No, sir; I think not.

" 69 x-Q. Was used to some extent?

" A. I think so."

The same witness produces an order addressed by him to the defendant under the name "Goodyear G. Co.," in 1869 (fol. 86, Add. R.), and also several receipts given to him by *defendants* in 1868, signed "Goodyear's I. R. G. Manufacturing Co." (fol. 87, p. 59).

Shepard is also asked (Add. R., p. 43) :

" 80 x-Q. Referring to the letter of Mr. Allerton, in which he " says : ' we (the Goodyear's India Rubber Glove Manufacturing " Company), have been long known and understood by people " generally as being the Goodyear Rubber Company ; ' do you mean " to say that you did not know that prior to May, 1873, the Good- " year's India Rubber Glove Manufacturing Company had been ad- " dressed in bills, letters, and communications of that kind as the " Goodyear's Rubber Company ?

" A. They had not, to my knowledge, *in a general way.*"

" 81 x-Q. Not to some extent ?

" A. *Not to any considerable extent.*"

" 82 x-Q. Well, you still evade the question by qualifying your " answer by ' considerable ' ; had they to any extent ?

" A. I do not think they had to any extent ; I do not think they " were known by people generally in any other way than the Glove " Company."

" 83 x-Q. I don't ask you whether they have been known " generally ; I ask whether to any extent they were addressed in " that way ?

" A. As far as my personal knowledge was concerned, *I would say in a very, very limited way if at all.*

" x-Q. 84. Had they been addressed so in a limited way, to your " knowledge ?

" A. *In a very limited way ;* never, to my knowledge, that I " recollect now."

The Court will draw its own conclusions in reading all of Mr. Shepard's evidence, as to whether he is a fair witness or not, and whether the answers quoted are not substantial admissions to the contrary of Judge WALLACE's finding.

Indeed, Shepard had to admit, after positively swearing that the defendant company had never been addressed or known to him or his concern otherwise than as the " Glove Company ;" and after admitting that the use of the name, " Goodyear's I. R. G. Co." was what he calls " an attempt at an imitation of our name " (Add. R., p. 28, x-Q. 253), " and one so nearly alike as to be an interference " (Q. 258) ; that *his own concern had addressed them by that very title*, and *rendered bills to them under that title* as early as 1865 (Add. R., p. 29, fols. 43–44).

7. The concluding sentences of the opinion of the Court below

also seem to confuse the question of the right of the *complainant* to *exclusive* protection with the question whether or not the *defendant* had a right to *exclusive* protection.

Whether the defendant is entitled to *exclusive* protection or not does not bear upon the question of such right in the complainant.

The remark that upon the same "theory it" (the defendant) "can also claim the exclusive right to use the multitude of mis-"nomers applied to it from time to time by its careless customers," is quite unnecessary.

There is, properly speaking, no "multitude of misnomers."

All the misnomers which have been proved have substantially the same characteristic, and do not materially differ from each other. They all, under slight variations, address the company named in them as one doing a general rubber business and not a special one.

## SIXTH POINT.

### The Circuit Court had no jurisdiction of this case to render any decree.

We trust that the Court will see some way in which it can decide this cause upon its merits, but we fear, that the absence of jurisdiction in the Circuit Court is apparent, and ought to be noted.

It is true that the defendant invoked the jurisdiction of the Circuit Court by filing petitions on behalf of the non-resident defendants for removal to the Circuit Court.

The plaintiff in the State Court alleged that the principal corporation defendant was a foreign corporation, and said nothing as to the residence of the other defendants.

It appears by the proofs that the principal corporation defendant was a Connecticut corporation which was afterwards incorporated also in New York (p. 105, R.).

The Goodyear's Rubber Manufacturing Co. was also a Connecticut corporation which had also filed a certificate in New York (p. 102), although this was proceeded no further with.

The defendant Allerton was a citizen and resident of Connecticut.

The defendant Vermeule's residence and citizenship was not stated in the complaint, but the proofs show that he had been for many years a resident of New York.

The removal to the Circuit Court was prayed for by three of the defendants, on the ground that as to each of them separately there was a controversy which could be determined without the presence of the other defendants (Vermeule).

At that date it was supposed that such removal was authorized by law.

*Clark vs. Chicago.*, 11 F. R., 355.
*Boyd vs. Gill*, 19 F. R., 155.

Later decisions of this Court have settled that a removal cannot be had by less than all of the several defendants, on the ground that they but not the others were non-residents, unless the complaint shows a cause of action which is, as stated in the complaint, a separate one as against the removing defendants.

To uphold jurisdiction, it must *appear* by the papers *either* that *all* of the defendants are citizens of a State other than that of plaintiff, *or*, that the cause of action against the non-residents was separate and separable.

It is not sufficient that the cause of action as stated by the complaint *might have been* several as well as joint.

That is all that can be alleged of the present case.

*Sloane vs. Anderson*, 117 U. S., 275, and cases there cited.
*Ayres vs. Wiswall*, 112 U. S., 107.
*Peninsular Co. vs. Stone*, 121 U. S., 631.

The complaint makes all four defendants jointly responsible, and prays an injunction against them as having conspired together to do the acts complained of, and it does not appear that all of the defendants were non-residents of New York, but rather the contrary.

No removal can be had in such a case.

Nor can it be had by a corporation organized under the laws of a foreign State, if such corporation be also organized under the laws of the same State as the plaintiff, and yet such is the case here.

*Home vs. Boston Co.*, 19 F. R., 50.

## SEVENTH POINT.

**The decree of the Court below should be reversed with costs.**

FREDERIC H. BETTS,
Of Counsel.

SUPREME COURT U. S.
FILED.
OCT 30 1903
JAMES. H. McKENNEY.
CLERK.

# SUPREME COURT OF THE UNITED STATES.

THE GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY and THE GOODYEAR RUBBER MANUFACTURING COMPANY,

*Appellants,*

*vs.*

THE GOODYEAR RUBBER COMPANY,

*Respondent.*

# BRIEF ON BEHALF OF RESPONDENT.

W. W. McFARLAND,
*Of Counsel.*

Burgoyne Quick Printing Co., Cor. Walker and Centre Sts., New York.

# Supreme Court of the United States.

THE GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY and THE GOODYEAR RUBBER MANUFACTURING COMPANY.

vs.

THE GOODYEAR RUBBER COMPANY.

## The Question of Jurisdiction.

This suit was commenced in the Superior Court of the City of New York, in June, 1882 (Record, p. 1). The defendants named in the summons are:

Goodyear's India Rubber Glove Manufacturing Company,

Goodyear's Rubber Manufacturing Company,

George M. Allerton, who was president of the defendant, the Glove Company (fol. 16), and

John D. Vermeule, who was vice-president.

It came out on the hearing that there was no such corporation as the Goodyear Rubber Manufacturing Company, that name having been adopted merely as an alias by the Glove Company. Vermeule and Allerton, being officers of the latter company, and having no other interest (no relief being asked against them personally), it is apparent that the only real defendant is the Glove Company, a Connecticut corporation.

That company, in July, 1882, filed its petition in the Superior Court, for a removal on the ground of citizenship (p. 9). In the same month, a similar petition was filed in the name of the Goodyear Rubber Manufacturmy Company, the alias above mentioned, also on the ground that it was a Connecticut corporation (p. 7).

In the same month Allerton, who was also a citizen of Connecticut, filed a like petition on the same ground (p. 17). Vermeule did not move.

The appellant's solicitors have notified the respondent's solicitors that the point will be made in this Court on the argument that the cause was not removable and that the Circuit Court was without jurisdiction. Considering that the appellants themselves invoked the jurisdiction of the Federal Court, the position is novel, to say the least. But there is nothing in it.

The point is understood to be that the case was not removable on the ground that it presented a separable controversy; and further, that Vermeule, being a citizen of the same State with the plaintiff company, there was no jurisdiction on the ground of citizenship. To this contention there are several answers.

**I.** After the long lapse of time and in the present state of the suit the Court would decline to listen to the point even if it had technical merit.

French vs. Hay, 22 Wal., 238.

**II.** It may have been that the case was removed on the theory of a separable contrroversy, although the petition in terms goes on the ground of citizenship. However that may be, if there was federal jurisdiction on either ground, it is enough.

Canal, &c., R. Co. vs. Hart, 114 U. S., 655.

**III.** It is wholly unnecessary to consider whether there was a separable controversy.

The only citizen of the same State with the plaintiff was, as we have seen, Vermeule, the treasurer and manager of the defendant corporation. As such he was merely a formal party, against whom personally no relief is asked, and whose presence, therefore, does not affect the jurisdiction.

The Chicago, Rock Island, &c., R. Co., 6 Blatchf., 105.
McHenry vs. N. Y. P. & O. R. Co., 25 Fed. Rep., 65.
Ward vs. Davis, 18 Howd., 467.
Harter vs. Kernochan, 103 U. S., 562.
Bacon vs. Rives, 106 U. S., 99.
Removal Cases, 100 U. S., 457.

It is submitted that the point that the Circuit Court had no jurisdiction, assuming that it could now be raised, is wholly without merit.

W. W. MacFarland,
Of Counsel for the Complainant and Respondent.

Case Supreme Court U. S.
FILED.
OCT 30 1888
JAMES. H. McKENNEY.
CLERK.

# SUPREME COURT OF THE UNITED STATES.

THE GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY and THE GOODYEAR RUBBER MANUFACTURING COMPANY,

*Appellants,*

*vs.*

THE GOODYEAR RUBBER COMPANY,

*Respondent.*

# BRIEF ON BEHALF OF RESPONDENT.

W. W. MAC FARLAND,

*Of Counsel.*

BURGOYNE QUICK PRINTING CO., COR. WALKER AND CENTRE STS., N. Y.

# Supreme Court of the United States.

THE GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY and the GOODYEAR RUBBER MANUFACTURING COMPANY,

Appellant,

vs.

THE GOODYEAR RUBBER COMPANY,

Respondent.

## BRIEF ON BEHALF OF THE RESPONDENT.

### Statement.

This is an appeal from a decree of the Circuit Court of the United States for the Southern District of New York, enjoining the appellant from appropriating and using for the purpose of its own business (which is the same as that of the respondent) the respondent's corporate name.

FIRST. When the suit was brought it was supposed by the respondent that the appellant's two names represented in fact two distinct corporations, but closely identified in interest. But it came out in the evidence that there was no such corporation as the Goodyear

Rubber Manufacturing Company, and that the latter name, after the creation of the corporation respondent under the corporate name of the Goodyear Rubber Company, was by the appellant *annexed* to its own corporate name which was and is the Goodyear India Rubber Glove Manufacturing Company.

An attempt was made to obtain color of legal authority for the assumption of this additional name by the manager of the Glove Company filing a certificate of incorporation by that name under the Manufacturing Act of the State of New York (Record, p. 27), and the appellant says this was done "for the purpose of claiming said name on behalf of said first-named defendant" (*i. e.*, the Glove Co.), and that it was afterwards used in connection with its business, but there was no corporate organization under the certificate. The filing of this certificate and another is what the defendant means in its answer when it says it filed the complainant's name as a trade-mark.

In 1882, an application was made by the appellant to the Legislature of the State of Connecticut for leave to assume the name of the Goodyear India Rubber Manufacturing Company as an additional name (Respondent's Ex. 22; Addition to Record, p. 93). This was done, as the appellant says, "to protect the name which we claimed the right to from many years use" (Record, p. 86). The application was for "*an additional name*" (Record, p. 71). It was denied (Record, p. 72; Addition to Record, p. 9). But very shortly afterwards, in March, 1882, the appellant filed a certificate of incorporation by the name it sought to acquire under the laws of the State of Connecticut (Applt.'s Ex., Record, p. 103). It is conceded that, as in the case of the certificate filed in New York, this was merely a device for claiming an additional name (Record, p. 86).

And now the appellant says that as the result of these proceedings its full corporate name is "Good-

year's Rubber Manufacturing Company and Goodyear's India Rubber Glove Manufacturing Company."

There is then, as appears from the foregoing, in fact but one appellant with two pretended names, the one being its true corporate name and the other an assumed name.

SECOND. In the next place it is conceded that the name assumed by the appellant and as used with the abbreviation "Mfg." printed in small type is practically indentical with the name of the respondent, even the slight distinction made by the word "manufacturing" being in effect suppressed.

Indeed the appellant's cross-bill is founded upon the assertion of this practical identity. In that bill it sets up a title to the name of Goodyear's Rubber Mfg. Co., insists that Goodyear's Rubber Co. is in effect the same name and asks that the respondent may be enjoined against its use.

THIRD. *Therefore the precise and the only question is which of the parties has the right to the use of the name in question, identity being admitted.*

FOURTH. Having now defined the parties and stated the question in controversy to be decided, the facts appearing in the record material to the decision of the question will be stated, and it may be mentioned at the outset that there is no dispute as to any material fact.

I. The appellant the Goodyear India Rubber Glove Manufacturing Company was created a corporation by that name under the Laws of the State of Connecticut, in the year 1847 (Record, p. 109, Exhibits).

The capital stock was six thousand dollars, and the company was organized as the certificate says "for the purpose of manufacturing and selling india rubber gloves and mittens, together with keeping a retail dry

goods and grocery store." The gloves and mittens were made under a license from Goodyear. After the expiration of his patents and about the year 1865, the company engaged in the manufacture and sale of other rubber goods, and established a place of business in the City of New York (Record, pp. 53, 54, 63).

The company has since that time continued to carry on in the City of New York, the general business of manufacturing and selling all sorts of rubber goods, and in that respect the business of the respondent and the appellant is substantially the same.

II. The Goodyear Rubber Company, the respondent, was created and organized under the Laws of the State of New York, in the year 1872, and commenced business about the 1st of January, 1873 (Addition to Record, p. 3).

Its capital stock was $500,000 paid in cash (Addition to Record, p. 15).

The company was very prosperous, and when this suit was commenced its business was the largest of the kind in the United States. It had branch houses in all the large cities, and it had relations of trade and business with pretty much the whole world (*Id.*, p. 3).

III. Before the organization of the company respondent, the appellant had never used in its business the name of Goodyear Rubber Manufacturing Company, nor any other than its true corporate name. In the trade it was commonly known and called the "Glove Company."

Mr. Shepard, Addition to Record, pp. 5, 6, 43; Mr. Vermilye, *Id.*, pp. 49, 50.
Mr. Gatchel, Record, p. 124.

And in simple business transactions, such as signing receipts, it very commonly signed for short "Goodyear's Glove Co.," and "Goodyear's I. R. G. Mfg. Co.;"

this latter seems to have been one of its favorite signatures (Addition to Record, p. 100; Record, p. 129 *et seq.*, p. 115 *et seq.*; Addition to Record, pp. 50, 61); but the name usurped later was never employed.

IV. Shortly after the company respondent was organized the appellant faintly objected that it had adopted a name too much like its own (Mr. Allerton's Letter, p. 3, Addition to Record). But this objection was based upon the mistaken idea that the name "Goodyear Rubber Co." was not the name of a new corporation but one assumed by the "Rubber Clothing Co.," an existing corporation, for Mr. Allerton's letter is addressed to the Rubber Clothing Company, and it is requested to "*return to its true name.*"

This impression seems to have continued even as late as the filing of the answer (Ans., Record, pp. 27, 28).

It was wholly erroneous; there never was identity between the two in name or interest (Addition to Record, pp. 34, 69). No one but the Glove Co. ever questioned the right of the respondent to its corporate name (*Id.*, 35).

The appellant did not follow up its objection, and, on the 7th of September, 1875, the respondent and appellant formally entered into a series of written contracts in their respective true corporate names and under their respective corporate seals, which are still executory (Addition to Record, pp. 7, 84, 85).

V. We shall now see by what cautious, insidious steps the appellant proceeded to appropriate the respondent's corporate name to its own use, until, at last encouraged by the appellant's forbearance, it threw off all disguise and boldly claimed it as one of its own names.

In the beginning there was no intention to assume the respondent's name, for, in 1873, the appellant issued a circular to the trade under its own corporate name, stating that it had "no connection whatever with a

concern lately started styled 'Goodyear Rubber Co.,' and saying "to avoid mistakes in future please address us in full as below," "Goodyear I. R. Glove Mfg. Co."

As late as November 1st, 1875, a similar circular was addressed to the trade disclaiming the name of, or any connection with, the Goodyear Rubber Co., and saying, "we refer you to the enclosed cards and envelope *on which you will observe our name in full.*" The name given was "Goodyear I. R. Glove Mfg. Co." (Addition to Record, p. 84).

Shortly afterwards there was a complete change of policy on the part of the appellant.

The respondent had been extremely successful in business, and waxed great. It was thought there would be more utility in appropriating its name and good-will than in disclaiming any connection with this overshadowing rival.

The change commenced by the use of small side signs, comparatively inconspicuous, bearing the name Goodyear Rubber Manufacturing Company,

Addition to Record, p. 6, Shepard.

The trade is notified of a change of address which is now to be Goodyear's Rubber Manufacturing Co., or Goodyear's India Rubber Glove Manufacturing Company.

Addition to Record, p. 96.

They have now substantially appropriated to their own use the respondent's corporate name, which was in the same full sense its property as its merchandise or money, and the one might have been taken with as much propriety and legality as the other. But this trade circular was a tentative measure. It would seem to have been put out to see how much the respondent would stand, to what extent its rights might be invaded with impunity. It was not until 1880 that the appellant ventured to use the respondent's name on its letter and bill heads. The style then adopted was "Office of

Goodyear's Rubber Mfg. Co.," or "Goodyear's India Rubber Manf'g Co."

Still further emboldened by the respondent's patience under aggression, the appellant, on removing to 503 Broadway in 1882, dropping its own name altogether, audaciously placed upon its business signs at that place the respondent's name in this form, "Goodyear's Rubber Mf'g Co.," the first words in very large letters, one sign being over the main entrance, the other on the sidewalk in the shape of a triangle set on its base.

Addition to Record, pp. 6, 63, 64; Record, pp. 54, 55, 56.

As an additional means of appropriating the respondent's good-will and business the appellant imitated the respondent's trade circular in style of print and head lines.

Addition to Record, p. 10.

VI. This assumption of the mask of the respondent and counterfeiting its personality constantly caused mistakes to be made, and led to the greatest confusion.

Addition to Record, pp. 7, 8, 46.

It was also very prejudicial to the respondent's business (Addition to Record, p. 37), and finally became unbearable, and then this suit was commenced, resulting in a decree permanently enjoining the appellant against continuing its usurpation.

VII. By this time curiosity must have been aroused as to the ground upon which the appellant defends this manifest and flagrant invasion of the respondent's rights. That ground is most strange, as will appear.

It is averred in the answer (Record, p. 26) that the appellant had for many years been the most prominent corporation engaged in the manufacture of rubber goods, and had become known to the trade generally by names abbreviated from its full corporate name, in which the name Goodyear in connection with the

word company has always been used as designating the appellant. The theory and claim of the defense is here outlined. It is made quite specific by the testimony of Mr. Vermeule, the president of the company.

On cross-examination he is asked, "Does your company claim title to all the various abbreviated names of which it has been addressed?" * * * Ans. "It claims title to everything with the name of *Goodyear* in connection with the manufacture of rubber goods."

Q. "Then your company claims title to every name which embraces the word Goodyear?" Ans. "Yes, sir."

Q. "My question is whether you claim an exclusive right to the use of every name which embraces the word Goodyear in connection with the manufacturing and sale of rubber goods? A. *Yes, sir*" (Record, p. 56).

Nothing could be more explicit and at the same time more absurd. Any name that can be devised containing the word "Goodyear" belongs to the appellant in exclusive ownership, and of course may not be employed by any one else. It may appropriate any and all of such names to its own exclusive use as aliases, consolidating and compounding them as it was with its own name in the same way that it has dealt with the respondent's corporate name in this case. Such is the claim.

VIII. The appellant's exclusive title to the word "Goodyear" and to all possible combinations of that word was supported by the following proof and no other:

A search was made under the direction of the president through the correspondence of many years for letters inaccurately addressed or in which some abbreviation had been used, such only being sought for (Mr. Vermeule, Record, p. 58). By the letters so produced it appeared that in the eleven years preceding

1873 the defendant had received five thousand letters exhibiting some departure or variation from its full corporate name, but all containing the word Goodyear in some combination. Of such inaccuracies there were in all seventy different types. The defendant's theory, as we have seen, is that as the legal result of the careless mistakes of its correspondents it has acquired a title to every one of these names. Owning them all it was of course at liberty to select for use any one of them, and naturally selected the one that had become the corporate name of the complainant and to which an extremely valuable good-will was attached. Such was the process. It appeared, however, that such mistakes occurred only in a very small percentage of the correspondence, in only about four hundred and fifty letters a year, whereas, as Mr. Vermeule informs us, a year's correspondence embraced many thousands of letters (Record, p. 58).

Mr. Robert S. Walker, secretary of the defendant company for seventeen years (1862 to 1879), embracing the whole period of the correspondence put in evidence, says that "the great bulk of the correspondence" has on it the true legal name of the company, and that variations were the exception (Record, p. 115).

IX. It appears then that even if as matter of law there could be anything in the defendants' extravagant claim *it has no foundation in fact*, resting as it does, upon selections from a comparatively few wrong addresses. But whoever before heard of a title to a name being acquired in that fashion?

The defendant does not pretend that it ever deliberately adopted an alias as a trade-mark. The pretense is that a great many aliases were thrust upon it by careless correspondents, all of which in consequence became available *trade-marks* to be utilized as such offensively or defensively at the defendant's pleasure. This is al-

together wrong and refuses to adjust itself to right reason or to common sense.

There is no foundation in fact for the assertion that by long exclusive usage and the assent of the trade the defendant had acquired a sort of monopoly of the word "Goodyear" in connection with dealing in rubber goods.

That name in connection with that trade was in very common use long before the defendant emerged from its original and unpromising chrysalis of gloves, mittens, dry goods and groceries.

Addition to Record, pp. 4, 5; Record, p. 139 *et seq.*

Therefore, the frivolous claim that the defendant had acquired by long use some right to this word or name in all its possible combinations falls to the ground, for as matter of fact, there was no such use.

The foregoing statement embraces every fact in the case of any materiality, and, as before stated, there is no controversy or conflict of evidence about any of them.

They really present no question of law at all, for it is perfectly obvious and wholly undisputed that the defendants wrongfully appropriated plaintiff's name to the plaintiff's injury and in such cases a permanent injunction is a matter of course.

## FIRST POINT.

**It is established and indeed conceded that the name for which the plaintiff seeks protection is the name by which it was incorporated and under which it has built up a very large business and that for**

**all practical purposes it is identical with the name adopted by the defendants.**

I. It has been seen that the defendants' cross-bill is founded upon this identity of names and Mr. Vermeule, the president of the defendant company, expressly asserts in his testimony that the names are the same, and insists that his company has the exclusive right to the use of both names, Goodyear Rubber Co. and Goodyear Rubber Manufacturing Co. "Q. Your claim would in the same sense apply to both names? A. I should think it would."

II. The case, therefore, is not embarrassed by any controversy as to the fact of the identity of the names employed, as is usually the case; nor is it contended that the name in question is not one that may be lawfully adopted and exclusively appropriated, for *the defendant insists that it is and that it actually owns the name.*

The question then is narrowed to this, namely, which of those two corporations has the legal right to the exclusive use of this lawful name?

## SECOND POINT.

**The title as between the complainant and the defendant to the name Goodyear Rubber Company and the exclusive right to its use belongs to the complainant.**

I. So far as appears no one except the defendant has ever challenged the right of the complainant to the exclusive use of the corporate name which it adopted at its creation, but it is enough for the purposes of this case to establish that right as against the defendant.

Newman vs. Alvord, 51 N. Y., 189.

II. The name by which the defendant was incorporated, and which the law gives it, is GOODYEAR INDIA RUBBER GLOVE MANUFACTURING COMPANY.

The name by which the complainant was incorporated, and which the law gives it, is the GOODYEAR RUBBER COMPANY.

It is not pretended that there is any similarity between these two names.

Therefore, as far as the law is concerned, it finds and leaves these two corporations with their separate and distinct corporate names, and we have seen them respectively recognizing each other's respective names and seals in their formal contract relations.

If the defendant had ever really believed that the complainant, so formidable a rival in business, had adopted a name to the use of which the defendant had a better right, it is not conceivable that there would have been a formal recognition of the complainant's title, or that the complainants would have been permitted to use the title without a struggle. It would not have been furtively, cautiously and gradually appropriated, every step indicating a consciousness of wrong doing; the defendant would have boldly and promptly asserted its claim of superior right in a court of justice.

Upon the face of the matter complainant has acquired a right and title to its corporate name in the way pointed out by statute, and is entitled to protection against the defendant's piracy. Moreover, the defendant witnessed the rise and growth of the complainant under this name until it attained overshadowing proportions without ever asking any protection of the law for any pretended right of its own in the premises, or venturing to openly appropriate the name in its own use, thus admitting both by its action and non-action in a very emphatic way the complainant's just right to the corporate name it had taken when it was created.

III. It remains to examine the theory upon which the defendant claims the right to discard the name under which it was incorporated, and assume the name under which the complainant was incorporated. We are not left to conjecture what that theory is, for it is expressly declared, as we have seen, to be that the defendant is entitled to the exclusive use of any name containing the word "Goodyear" in any possible combination.

But the absurdity of that position is too manifest and gross to call for serious consideration. What, pray, was the origin of that right? Certainly not the fact that the defendant in selecting a corporate name employed that word as one of its factors. Corporations do not acquire a monopoly of the use of words in that way.

It is said that the trade fell to a certain extent into the habit of addressing the defendant by a variety of wrong names, and by abbreviations of its true name in all of which the word "Goodyear" was a component part of the name employed, and in that way the defendant obtained a right to *all* names by which it was wrongly addressed that contained the word "Goodyear," and that among them was the plaintiff's name.

According to this theory, it would appear that in the first instance the defendant acquired a right to the complainant's name not by voluntarily assuming and appropriating the name, but through the errors of its own correspondents, and that through their mistakes the complainant lost its corporate name, and the defendants acquired it and thus obtained the right to enjoin the complainant against its use, which it is sought to enforce by the cross-bill.

It cannot be profitable to pursue these idle theories, but it may not be amiss to point out that the supposed facts on which they are founded have no existence.

1. It is very probable that the defendant never

would have ventured upon this audacious invasion of the complainant's right if the defendant had not (as appears by its answer) supposed that there was no such corporation as the complainant; and that a relatively insignificant company known as the Rubber Clothing Company had adopted the name Goodyear Rubber Company as an alias. It is very strange, indeed, that such ignorance should have existed, but we are at liberty and, perhaps, bound by the answer to assume that it did. If so, to a certain extent it explains the defendant's otherwise unaccountable conduct.

2. It appears by the foregoing statement of facts that the defendant never employed the name in question, nor any name that could possibly be mistaken for the same, in its business, until after the incorporation of the complainant, and after the company had carried on business under its corporate name for some years.

3. It further appears that instead of assuming the name and claiming the exclusive right to its use, the defendants in the beginning *distinctly disclaimed it*, pointing out in a series of circulars issued to the trade that it had no connection with a "*concern*" of that name, and cautioning the public to address it by its own name, enclosing printed envelopes in letters to customers to ensure their doing so.

4. The great prosperity of the complainant's business excited jealousy and cupidity and tempted encroachment. When the policy of sharply maintaining its own distinct personality was abandoned, and it was decided to assume the mask of the complainant and steal its business in that disguise, the first steps were tentative and very cautious.

The aggressor crept upon its victim stealthily, as is the practice in such cases, and the pretense that the

defendant had, or ever honestly supposed it had, any right to substitute the complainant's name for its own by virtue of prior acquisition or use, is distinctly disingenuous and fraudulent.

Nothing more plainly indicates this than the devices resorted to after the incorporation of the complainant for the purpose of obtaining color of right to appropriate to itself the complainant's name by application to the Connecticut Legislature and by filing fraudulent certificates here and there, not for the purpose of carrying out the intention therein expressed and declared, but merely to give false color of legality to an intended theft of a neighbor's name and business.

The motive of such conduct is not to be misunderstood; indeed, there is no attempt to conceal it in the pleadings or in the proofs, and it cannot commend itself to a court of equity.

5. The statement that until its adoption by the complainant the word "Goodyear" had been exclusively employed by the defendant in connection with the manufactures and sale of rubber goods is proved to be *wholly untrue*.

And, in short, every theory and every pretense by which the defendant seeks to maintain and justify its usurpation of the complainant's rights is shown to be utterly frivolous and illusory.

## THIRD POINT.

**Upon the foregoing facts admitted and proved the decree appealed from should be affirmed.**

I. It has been shown that the defendant distinctly admits and indeed claims that the name it has adopted and the complainant's corporate name are substantially identical; therefore, upon this fundamental fact, which in most cases is the fact to be decided, the parties are agreed and it is not in contention. Another question which is not infrequently present, namely, whether the particular name is capable of exclusive appropriation, is also absent here; for it is conceded and claimed by both parties and indeed is not to be denied that the name in question is capable of such appropriation. The name admittedly indicates not quality, ingredients or composition, words expressive of which are the property of all mankind, but personality, origin, ownership (Caswell vs. Davis, 58 N. Y., 223). It identifies a particular legal person in the same sense that a natural person is identified by his baptismal name.

It was said in Ainsworth vs. Walmsley (L. R., 1 Eq., 524) that in its proper office as indicating origin or ownership (1 Holmes, 194) "a man's name is as strong an instance of trade-mark as can be suggested."

II. Upon the foregoing facts all conceded or so clearly established as to be beyond the range of debate there can, it is submitted, be no doubt at all that as against the defendant the complainant has the exclusive right to the use of its corporate name, "Goodyear Rubber Company." Indeed, public policy and the settled rules of law forbid the abandonment by corporations of their true names, and the assumption of false names: and this offense against law as well as against the rights of the complainant the defendant has manifestly committed.

III. It follows, as matter of course, that the complainant is entitled for its protection to a permanent injunction. In the case of Celluloid Manufacturing Company vs. Cellunite Manufacturing Company, 32 Fed.

R., p. 97, Judge BRADLEY, in holding that Cellunite as a name was the equivalent of Celluloid, says: "It is the object of the law relating to trade-marks to prevent one man from unfairly stealing away another's business and good-will. Fair competition in business is legitimate and promotes the public good, but an unfair appropriation of another's business by using his name or trade-mark or an *imitation* thereof calculated to deceive the public or in any other way is justly punishable by damages and will be enjoined by a court of equity."

Again, "similarity, not identity is the usual resource when one party seeks to benefit himself by the good name of another." In this case it has been seen that actual identity is admitted and claimed by the defendant. The offense is accentuated by the fact that it involves the disuse of a true name and the adoption and use in its stead of the complainants' name. A more pronounced case of "stealing away another's good name and business could not well be stated."

In the case of the State vs. Hutchinson, 2 Ry. & Corp. Journal, 252, the Supreme Court of Missouri held that the Kansas City Real Estate Exchange and Kansas City Stock Exchange were substantially identical names, and, among other things, the Court says: "The name of a corporation is a necessary element of its existence, and aside from any statute the right to its exclusive use will be protected upon the same principle that persons are protected in the use of trade-marks."

It is wholly unnecessary to multiply authorities in support of a doctrine of equity so well settled; strong and pertinent illustrations of its application are to be found in the following cases.

Colton vs. Thomas, 2 Brewster, 308.

Merchants' Banking Co. vs. Merchants' Joint Stock Bank, 26 Weekly Rept., 847.

Singer Machine Manufacturers vs. Wilson, L. R., 3 App. Ca., 376.

Coleman vs. Crump, 70 N. Y., 573.
Lee vs. Haley, L. R., 5 Ch., 155.
Brooklyn White Lead Co. vs. Masury, 25 Barb., 418.

## FOURTH POINT.

**The decree should be affirmed.**

W. W. MacFarland,
Of Counsel.